



ROY COOPER  
*Governor*

MICHAEL S. REGAN  
*Secretary*

MICHAEL SCOTT  
*Director*

February 27, 2017

**Sent via Email**

Mr. William Mateikis  
Senior Vice President-Legal  
Daikin Applied Americas, Inc.  
13600 Industrial Park Blvd  
Minneapolis, Minnesota 55441

Mr. Paul Heim  
Senior Vice President-Legal  
Daikin Applied Americas, Inc.  
13600 Industrial Park Blvd  
Minneapolis, Minnesota 55441

RE: ***Issuance of Alternate Mechanism Pending DEQ Response to Comment***  
Former Heatcraft Remediation Site  
602 Sunnyvale Drive  
Wilmington, North Carolina  
EPA Id Number: NCD 057 451 270

Mr. Mateikis and Mr. Heim:

The North Carolina Hazardous Waste Section (Section) opted to revise the Alternate Mechanism in lieu of Post-Closure Permit (originally executed August 14, 2012) for Daikin Applied Americas, Inc. The purpose of the revision was to remove specificity related to an outdated *Sampling and Analysis Plan* and to develop a more generic document.

The public comment period began on January 6, 2017, and ended on February 20, 2017. One comment was received during the public comment period. This comment is attached for your records.

The Section will address the comment and send copies of that response to Daikin Applied Americas, Inc., and Port City Distribution, LLC. Until the final decision is made, the Alternate Mechanism in lieu of Post-Closure Permit which was executed on August 14, 2012, remains in effect.

Should you have any questions or comments, please do not hesitate to contact me at 919-707-8208 or via email at [mary.siedlecki@ncdenr.gov](mailto:mary.siedlecki@ncdenr.gov).

Sincerely,

*Mary Siedlecki*

Mary Siedlecki, Project Manager  
Department of Environmental Quality  
Hazardous Waste Section

Attachment: Comment Received during the Public Comment Period to Issue a Revised Alternate Mechanism in lieu of Post-Closure Permit

cc: Paul Heim, Daikin Applied Americas, Inc.  
William Mateikis, Daikin Applied Americas, Inc.  
Jim Rice, Port City Distribution, LLC  
Julie Woosley, Hazardous Waste Section  
Bud McCarty, Hazardous Waste Section  
Mary Siedlecki, Hazardous Waste Section  
Bobby Nelms, Hazardous Waste Section  
Ray Roblin, CORR Environmental Resources

# WASCO LLC

February 14, 2017

Ms. Julie S. Woosley  
Chief, Hazardous Waste Section  
N.C. Dep't of Env'tl. Quality  
Waste Mgmt. Div.  
1646 Mail Service Center, 217 West Jones Street  
Raleigh, N.C. 27699-1646

via FedEx, No. 7784 2786 9031



Mr. Sam M. Hayes, Esq.  
General Counsel  
N.C. Dep't of Env'tl. Quality  
217 West Jones Street  
Raleigh, NC 27603

via FedEx, No. 7784 2791 3524

Re Public Comments, Draft Revised Alternate Mechanism Document  
Former Heatcraft Remediation Site, NCD 057 451 270

Dear Ms. Woosley and Mr. Hayes:

The Hazardous Waste Section of the N.C. DEQ's Division of Waste (the "**Section**") has posted notice to its website of a 45-day public comment period (which ends February 20, 2017) regarding the Section's proposed revised Alternate Mechanism in lieu of Post-Closure Permit (the "**Proposed Alternate Mechanism**") for Daikin Applied America Inc. ("**Daikin**"), under EPA ID Number NCD 057 451 270, "Former Heatcraft Remediation Site" (the "**Facility**"). Please consider this our comments on the draft Proposed Alternate Mechanism.

## Background

The Section has posted on its website a copy of the Proposed Alternate Mechanism, a 3-page Fact Sheet, and a 2-page Public Hearing notice (collectively, the "**Notice Documents**"). The Fact Sheet confirms that an Alternate Mechanism associated with the Facility was executed on August 14, 2012 between the Section and Daikin — under its former name, "AAF-McQuay, Inc." ("**AMF**") — (the "**Current Alternate Mechanism**"). The Public Hearing notice identifies two reasons for the modifications to the Current Alternate Mechanism. The first is to "reflect changes in environmental sampling protocols." The second relates to "the change in operator name from AAF McQuay, Inc., to Daikin Applied America Inc."

The Current Alternate Mechanism (Docket No. 2012-028) identifies AMI as the "Facility Operator," and Port City Distribution, LLC ("**Port City**") as the "Facility Owner." Section IV of the Current Alternate Mechanism, which does not address the status of Port City, states:

"AAF-McQuay Inc. is an operator as defined in N.C.G.S. 130A-290(a)(21)."

The cover page of the Proposed Alternate Mechanism identifies the same two entities (using AMI's new name), the same docket number, the "Original Issue" date of the Current Alternate Mechanism, and adds "Modified: March 2017." But, the "Conclusion of Law and Determinations" language in

Section IV.B.2 (“Status of Daikin Applied Americas Inc.”) is changed to the following language:

“Daikin Applied Americas Inc. [fka AAF-McQuay Inc.] is an operator **as defined in 40 CFR 260.10**, adopted by reference at 15A NCAC 13A .0102(b), **and 40 CFR 270.2**, adopted by reference at 15A NCAC 13A .0113(a).”

Section IV.D.8 of the Proposed Alternate Mechanism states “pursuant to 40 CFR 270.1(c), incorporated by reference in 15A NCAC 13A .0113(a), the Facility is required to have a post-closure permit or be bound by the requirements of this Order.”

### Applicable Law

The Delegation of Authority to the Chief of the Section is limited, in relevant part, “to administer and enforce the regulatory provisions of Chapter 130A, Article 9 as it relates to Hazardous Waste Management.” The State’s “hazardous waste management program” is defined as “the program and activities within the Department pursuant to Part 2 of this Article [9], for hazardous waste management.”<sup>1</sup>

Section 130A-294(c) — the statutory authority for the Rules (defined below)<sup>2</sup> — expressly addresses “hazardous waste management,” and contains six occurrences of the term “operator.” The General Assembly added a definition for “operator” as 130A-290(a)(21) in connection with a 1989 amendment to 130A-290, and the definition has remained unchanged for over twenty-seven years.<sup>3</sup> The definitions set forth in 130A-290 apply throughout Article 9, unless a different meaning is required by the context. For example, the term “operator” is defined under Part 3 of Article 9 to mean “the person responsible for the overall operation of an inactive hazardous substance or waste disposal site.”<sup>4</sup> Thus, the context for that term as it is used in Part 3 of Article 9 is different from the 130A-290(a)(21) definition. But, because Part 2 of Article 9 does not contain a different definition of the term, the definition under 130A-290(a)(21) applies to the “hazardous waste management program.”

The Public Hearing document notes that applicable State rules associated with the Proposed Alternate Mechanism include “15A NCAC 13A .0105, .0109, and .0113,” and the Proposed Alternate Mechanism also references 15A NCAC 13A.0102, .0104, .0106, .0107, and .0110 (collectively, the “**Rules**”). Per the certified copy of 15A NCAC 13A that Ms. Woosley included with her September 7, 2016 letter to Messrs. David E. Kitts and Alejandro Sanchez (which is uploaded to the Laserfiche system in connection with EPA ID No. NCD 986 181 451, and included as Attachment 2 to this letter), (the “**Certified Rules**”), “G.S. 130A-294(c)” is the statutory authority for the Rules.<sup>5</sup>

The Proposed Alternate Mechanism references section 260.10 definitions (noting incorporation by reference language under Rule 13A.0102(b)) to assert Daikin is an operator and Port City is an owner.

<sup>1</sup> N.C.G.S. § 130A-290(a)(13).

<sup>2</sup> See *infra* note 5 and accompanying text; see also 55 N.C. Op. Atty. Gen. 73 (N.C.A.G.) (quoting 130A-294(c)); accord Affidavit of Spring Allen, No. 1:00CV203-T (Nov. 17, 2000).

<sup>3</sup> N.C. Session Laws 1989, c. 784, s. 1; see Open Records Request No. NCORR-2016-11-05 and related attachments, submitted to the Section’s Public Information Officer via an email dated November 19, 2016.

<sup>4</sup> N.C.G.S. § 130A-310(4). The definition, which closely matches the language of the definition of operator in 40 CFR 260.10, was added in Part 3 of Article 9, Chapter 130A in 1987. Sess. L. 1987, ch. 574, § 2.

<sup>5</sup> N.C.G.S. § 150B-21.6 is also identified, and Rule 13A .0113 includes two additional references.

Subsection “(a)” of Rule 13A.0102, when originally codified as 10 NCAC 10F.0002, included the following text: “The definitions contained in 40 CFR 260.10 (Subpart B), 40 CFR 270.2) [sic] and 40 CFR 124.2 have been adopted by reference in accordance with G.S. 150B-14(c).”<sup>6</sup> But, the Rule was amended and recodified, effective August 1, 1990, which included replacing the text of subsection “(a)” with the following: “The **definitions contained in G.S. 130A-290 apply to this Subchapter.**”<sup>7</sup> The text of subsection “(a)” of the Rule has remained unchanged since the 1990 amendment.

The Proposed Alternate Mechanism also references the section 270.2 definition of “owner or operator” (noting incorporation under Rule 13A.0113), which is addressed in Comment Section II.c., below.

### **Comments to the Proposed Alternate Mechanism**

These comments are organized into two categories: 1) comments related generally to the Proposed Alternate Mechanism; and 2) comments that are specifically related to the modified entity status determinations (comments related to Section IV.B–C).

#### **I. General Comments on the Proposed Alternative Mechanism.**

Comments associated with the provisions of the Proposed Alternate Mechanism, other than Section IV.B–C, **are set forth in Attachment 1 to this letter**, which is incorporated herein.

#### **II. Comments Related to Section IV.B–C.**

##### **a. Counter to the Historical Use of 130A-290(a)(21).**

Notably, the Proposed Alternate Mechanism changes the basis of determination of operator status contained in the Current Alternate Mechanism for the very same entity (after it changed its name) at the very same facility. There is no information in the Notice Documents that explains the Section’s reasoning and judgment associated with the changed basis for the classification of Daikin. With only two exceptions, the Alternate Mechanism documents available from the Laserfiche system that were executed over the period of 2009 to 2016 all cite to the 130A-290(a)(21) definition in Section IV (“Conclusion of Law and Determinations”).<sup>8</sup> Ms. Woosley signed two of the documents that cite 130A-290(a)(21), and the Director of the Division of Waste Management signed another.

##### **b. The State Rules Appear to Require the Use of 130A-290(a)(21).**

The citation to Rule 13A .0102(b) in the Proposed Alternate Mechanism to reference the definition of operator in section 260.10 appears to be inconsistent with the plain and clear language of Rule 13A .0102(a). Application of axiomatic standards of statutory interpretation to Rule 13A.0102(a) indi-

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<sup>6</sup> 10 NCAC 10F.0002(a).

<sup>7</sup> 15A NCAC 13A.0002(a) (which is now 15A NCAC 13A.0102(a)). The former “adopted by reference” language was modified (removing references to sections 270.2 and 124.2), and moved to subsection “(b).”

<sup>8</sup> See Open Records Request No. NCORR-2017-01-02 and related attachments, submitted to the Section’s Public Information Officer via an email dated January 31, 2017. Summary graphic included in Attachment 3.

cates that the definition in 130A-290(a)(21) should be cited in the Proposed Alternate Mechanism, rather than sections 260.10 and 270.2.<sup>9</sup> The citation to something other than 130A-290(a)(21) would appear to render the language of both 130A-290(a)(21) and Rule 13A .0102(a) to be redundant or useless, which is an outcome that the State's courts have noted to be impermissible.

c. Federal records do not support an interpretation of different definitions of "operator".

The Proposed Alternate Mechanism asserts that Daikin is also an operator under 40 C.F.R. § 270.2. To the extent that the reference contends a classification of operator that is different from the definition of "operator" under section 260.10, there is no federal support for such an assertion.<sup>10</sup> The plain language of the federal RCRA regulations incorporated into the State's Rules do not support such an interpretation. Further, EPA guidance suggests that the phrase "owner or operator" in section 270.2 simply means an "owner" or "operator" as those terms are defined under section 260.10.<sup>11</sup>

i. The RCRA regulations do not support an interpretation of a different type of "operator" under Part 270.

In relevant part, the introductory language of section 270.1(c), which the Proposed Alternate Mechanism references as a primary requirement associated with the document, states:

"The terms "treatment," "storage," "disposal," and "hazardous waste" are defined in § 270.2. Owners **and** operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners **and** operators of surface impoundments, landfills, land treatment units, and waste pile units that received waste after July 26, 1982, or that certified closure (according to § 265.115 of this chapter) after January 26, 1983, must have post-closure permits ..."

The first sentence does **not** include reference to the phrase "owner or operator." Importantly, the stated obligations refer to "[o]wners **and** operators," while the cited section 270.2 definition states that "[o]wner **or** operator means the owner or operator of any facility or activity subject to regulation under RCRA." Further, the definitions set forth in section 270.2 apply only to "parts 270, 271 and 124." The definitions set forth in section 260.10, however, apply to "parts 260 through 273" (*i.e.*, they apply to part 270). Because the cited introductory language of section 270.1(c) does not use the defined term "owner or operator," the requirements must apply to an "owner" and "operator" as defined under section 260.10.

<sup>9</sup> See *supra* notes 1–7 and accompanying text.

<sup>10</sup> In its response to FOIA Online Request No. EPA-HQ-2017-001749 (see [Attachment 4](#)), the EPA indicates that it was **not** able to locate any EPA guidance or policy records that would indicate that the definition of "owner or operator" under section 270.2 means anything other than an "owner" or "operator" as those terms are defined under section 260.10.

<sup>11</sup> But see Comment Nos. II.a-b. The 130A-290(a)(21) definition suggests the General Assembly's intent to sharpen the section 260.10 definition of "operator," and Rule 13A.0102(a) indicates that the 130A-290(a)(21) definition should be substituted for the section 260.10 definition of "operator" in the Rules. Each instance where the section 260.10 definition of "operator" is discussed under Comment Nos. II.c-d, in connection with the federal RCRA program, should be interpreted as substituting the 130A-290(a)(21) definition under the State's hazardous waste management program.

The same result occurs with the text of section 270.10, which addresses permit application requirements. The phrase “owner or operator” is first used in subsection “(c)” of that regulation. But, subsection “(b)” of that regulation states:

“Who applies? When a facility or activity is owned by one person but is operated by another person, it is the *operator’s* duty to obtain a permit, except that the *owner* must also sign the permit application.”

The duty to obtain a permit must logically be interpreted to mean “operator”— or, impliedly, “owner,” where the facility or activity is owned and operated by the same person — as those terms are defined under section 260.10. That interpretation is consistent with axiomatic standards of statutory interpretation and the U.S. Supreme Court: “Generally, ‘identical words used in different parts of the same statute are . . . presumed to have the same meaning.’”<sup>12</sup>

ii. Federal guidance does not support an interpretation of different definitions.

A compelling example of federal guidance that indicates that the definition of “owner or operator” under section 270.2 means an “owner” or “operator” as those terms are defined under section 260.10 is found in the EPA’s instructions for RCRA Part A permit application forms (“*Part A Instructions*”). From June 1980 to present, the Part A Instructions have used the language from the section 260.10 definitions of “owner” and “operator.”<sup>13</sup> The requirement to submit a Part A application is addressed in the federal RCRA statute,<sup>14</sup> and in section 270.10 (to which the definitions of section 270.2 apply). The EPA’s use of the section 260.10 definitions in the Part A Instructions strongly suggests that the EPA considers “owner or operator” to mean an “owner” or “operator” as defined under section 260.10.

Additionally, in connection of its promulgation of the original RCRA regulations in 1980, the EPA published a series of guidance documents that explained various RCRA definitions. The document related to section 260.10 addresses the EPA’s decision to change the originally proposed definition of “owner/operator” to two separate definitions. That explanation states: “there are a few standards with which only the owner can comply . . . [and in] the final rules, responsibility for complying with these standards has been assigned to the owner . . . [but responsibility] for complying with most of the final standards has been assigned to the ‘owner or operator.’” *Background Document: 40 CFR Part 260; Definitions and Provisions for Confidentiality* (Apr. 29, 1980), at 62–66. The EPA did not include any explanation for the section 270.2 definition of “owner or operator” in the background documents.

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<sup>12</sup> See *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 86 (2006) (unanimous opinion).

<sup>13</sup> See, e.g., *RCRA Hazardous Waste Part A Permit Application, Instructions and Form*, EPA Form 8700-23 (Jan. 2015), at 18, 47; *Application Form 1 – Gen. Information*, EPA Form 3510 (June 1980), Sec. D (Glossary), at 1-8. The same definition is also referenced in in other EPA forms in the “8700-xx” series of documents. See, e.g., *2003 Hazardous Waste Report, Instructions and Forms*, EPA Form 8700-13 A/B (Oct. 2003), at 11, 39. The various revisions of EPA’s *RCRA Inspection Manual* also only uses the section 260.10 definition of “operator.”

<sup>14</sup> RCRA § 3005(e)(C), 42 U.S.C. § 6925(e)(C) (one of the requirements of attaining interim status).

d. Interpreting “operator” differently under section 270.2 creates inconsistencies.

An interpretation that section 270.2 creates an operator classification that is different from, broader in scope than, and in addition to the section 260.10 definition would result in an illogical gap in the integrated scheme of the State’s hazardous waste management program.<sup>15</sup> For example, the phrase “owner or operator” would have a different meaning in Part 270 from the 817 separate references to that exact phrase in Part 265, where it means an “owner” or “operator” as those terms are defined under section 260.10. Yet, the permit regulations under Part 270 “establish provisions for . . . Standards for HWM facilities” included under Part 265.<sup>16</sup> Other examples exist in at least fourteen different regulations under Part 270, which use the phrase “owner and operator” or “owners and operators” to set forth requirements rather than using the defined phrase from section 270.2. In section 270.1, which is referenced in the Proposed Alternate Mechanism, there are eleven references to “owner and operator” or “owners and operators” before the single use of “owner or operator.”<sup>17</sup>

e. Ignoring the statutory definition raises questions related to the State Constitution.

The definition at 130A-290(a)(21) directly applies to the enabling statute that governs the State’s hazardous waste management program, and was part of a law passed in accordance with the requirements in the State Constitution.<sup>18</sup> Thus, the Section’s discarding of 130A-290(a)(21), and use of sections 260.10 and 270.2 in its place in the Proposed Alternate Document could potentially be viewed as usurping the General Assembly’s powers under the State Constitution.<sup>19</sup> Because the General Assembly has prescribed the powers and duties of the Department of Environmental Quality with respect to the state hazardous waste management program,<sup>20</sup> that should be the proper body to determine whether the 130A-290(a)(21) definition should govern administration and enforcement of the program.<sup>21</sup>

Because the Section’s use of sections 260.10 and 270.2 in the Proposed Alternate Mechanism is different from the 130A-290(a)(21) in at least seventeen prior Alternate Mechanism documents (including the Current Alternate Mechanism), there appears to be a valid question regarding whether the document may contravene the constitutional mandate of uniform applicability of general laws.<sup>22</sup>

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<sup>15</sup> See N.C.G.S. §130A-294(c) (stating the “rules shall establish a complete and integrated regulatory scheme in the area of hazardous waste management”).

<sup>16</sup> 40 C.F.R. § 270.1(a).

<sup>17</sup> The term “owner or operator” is only used one time in section 270.1, in paragraph (c)(7) of that provision, and it is not used in connection with a regulatory requirement (“At the discretion of the Regional Administrator, an owner or operator *may* obtain, in lieu of a post-closure permit, an enforceable document”).

<sup>18</sup> N.C. CONST. art. II, § 22, cl. 1.

<sup>19</sup> See *id.* § 1.

<sup>20</sup> See *id.* art. III., § 5, cl. 10; see also *id.* art. XIV, § 4 (the laws of the State “shall continue in force until lawfully altered”).

<sup>21</sup> Cf. N.C. Atty. Gen. Advisory Op., 1996 WL 925101 (stating an “agency must find within the statutes justification for any authority which it purports to exercise”).

<sup>22</sup> See N.C. CONST. art. XIV, § 3.



## Conclusion

For the reasons noted herein, there appears to be a valid question regarding whether the referenced applicability criteria of 40 CFR 270.1(c) has been met with respect to the Facility. To the extent the applicability criteria may be determined to have been met, several corrections to the text of the Proposed Alternate Mechanism are warranted. There are also questions raised by the fact that, on an approximate date in late 1993, Heatcraft withdrew from the 1989 AOC, which an ALJ confirmed was no longer effective as a consent order as a result of Heatcraft's withdrawal. As noted in the general comments section of this letter, it does not appear appropriate to reference those terminated provisions in the Proposed Alternate Mechanism (or the Current Alternate Mechanism).

Thank you, in advance, for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney G. Huerter". The signature is fluid and cursive, with the first name "Rodney" being more prominent.

Rodney G. Huerter  
VP & Senior Counsel

**Attachment 1**  
**Comments to Proposed Alternate Mechanism (NCD 057 451 270)**

1. **Section II.A.** “130-290, *et seq.*” is an incorrect citation of authority. In relevant part, the Section’s Delegation of Authority is limited to “the regulatory provisions of G.S. Chapter 130A, Article 9 [“**Article 9**”] as it relates to Hazardous Waste Management . . . .” The enabling statute under Article 9 that relates to “the management of hazardous waste” is N.C.G.S. § 130A-294(c).<sup>23</sup> Article 9 defines “hazardous waste management program” to mean “means the program and activities within the Department pursuant to Part 2 of this Article, for hazardous waste management.”<sup>24</sup>
2. **Section II.B.** The reference in this subsection to “this Order requiring corrective action mandated by 40 CFR 264.101 and 265.121” is addressed in Comment No. 9, below.
3. **Section III.B (Daikin Applied America Inc. Corporate Information).** Official documents that support the following comments are attached to Open Records Request No. NCORR-2017-01-01.<sup>25</sup>
  - a. Paragraph B.2. The first sentence appears to be contradicted by information in various relevant public documents. The information indicates the following:

Snyder General Corporation (a Texas corporation; “**SGC-TX**”) owned the subject property and operated an HVAC manufacturing facility. On December 30, 1986, SGC-TX was merged into SnyderGeneral Corporation (a Minnesota corporation; “**SGC-MN**”).

On June 30, 1988, SGC-MN sold the property to Heatcraft Inc. (a Mississippi corporation, which was a wholly-owned subsidiary of Lennox International Inc.; “**Heatcraft**”), which conducted HVAC-related manufacturing operations at the facility.

On April 18, 1989, Heatcraft entered into an Administrative Order on Consent (#88-139, the “**AOC**”) with the agency subdivision that had authority to administer the State’s hazardous waste management program (the Hazardous Waste Branch, “**HW Branch**”). The AOC requires Heatcraft, among other items, (i) to submit a RCRA Part A application, (ii) to submit RCRA closure and post-closure plans related to an area of spilled solvent, and (iii) provide RCRA closure/post-closure financial assurance related to the closure / post-closure plans (SGC-MN was not a party to the AOC). Heatcraft submitted a RCRA Part A application, as a TSD facility, dated January 5, 1990, which identifies Heatcraft as the sole owner and operator of the facility, and does not include any reference(s) to “SnyderGeneral.”

In a letter dated August 8, 1991, Sirrine Environmental Consultants (consultant for Heatcraft; “**Sirrine**”) submitted an amended RCRA Part A application form that identifies (A) “Lennox International Inc.” as owner of the Facility and (B) “SnyderGeneral Corporation” as the opera-

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<sup>23</sup> See *supra* notes 2 and 5, and accompanying text.

<sup>24</sup> N.C.G.S. § 130A-290(a)(13).

<sup>25</sup> Request No. NCORR-2017-01-01 was submitted to the Section’s Public Information Officer via an email dated January 31, 2017, as supplemented via an email dated February 6, 2017.

tor (indicating the date of change of operator control was July 1, 1991).<sup>26</sup> Lennox signed the form on August 7, 1991, and SGC-MN signed the form on August 1, 1991.<sup>27</sup>

Three months after Sirrine submitted the purported amendment to the Part A application, it submitted a Certification of Closure for a RCRA Hazardous Waste Unit on behalf of Heatcraft, which was associated with the site of the accidental spill of TCA that is referenced in the AOC (“**Closure Certification**”). A Heatcraft representative signed the Owner Certification Statement for the document on October 29, 1991 (the Closure Certification does not include any certification from SGC-MN). The Closure Certification confirms that, as part of the closure process: soil was removed, the subgrade was stabilized, a synthetic liner was installed, and Sirrine installed a 2-ft thick **clay cap, with a final cover** of erosion control stone. In a letter to Heatcraft dated January 16, 1992, the Chief of the agency’s Hazardous Waste Section (“**DEHNR HW Section**”) confirmed acceptance of the “certification of closure and the survey plat for the Hazardous Waste Management Area” at the facility.<sup>28</sup>

In a letter to NCDEHNR’s Division of Hazardous Waste Management dated December 30, 1991 (which the Section stamped as “RECEIVED” on January 6, 1992), Heatcraft’s Director of Operations states that Heatcraft “discontinued production at this subject facility on March 27, 1991 and do not intend to resume any manufacturing activity again.”

On March 17, 1992, SGC-MN was merged into SnyderGeneral Corporation (a Delaware corporation that was formed approximately two weeks earlier; “**SGC-DE**”). On May 4, 1994, SGC-DE renamed itself “AAF-McQuay Inc.” (“**AMI**”), which then renamed itself to “Daikin Applied Americas Inc.”

In a letter to the U.S. EPA dated 7/21/04, responding to the EPA’s 6/29/04 Request for Information regarding the Facility, AMI states that it had “not had control of the facility since [Heatcraft purchased the facility],” that it “does not have the authority to grant EPA access to the facility,” and also that it “does not have information relating to the operation of the facility before [it purchased the facility] or after [it sold it].”

Thus, to the extent that the statement “SnyderGeneral Corporation operated at the Facility from 1982 until 1994” is intended to mean operation under the State’s hazardous waste management

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<sup>26</sup> The applicable recorded property records do not support that Lennox was *ever* the property owner. The available records demonstrate that SGC-MN transferred the property to Heatcraft in 1988, and Heatcraft (*not* Lennox Int’l) transferred the property to Port City Distribution, LLC in 2011. Further, Heatcraft (*not* Lennox Int’l) filed a Declaration of Use for the property, which was recorded on 1/31/92.

<sup>27</sup> At least three documents on the Laserfiche system related to the Facility, which are dated between the effective date of the AOC and the date Sirrine submitted the amended Part A application, refer to Heatcraft as either: a “groundwater **post-closure** facility (**interim status**); “an **interim status** facility for **post-closure** groundwater contamination”; or “operating under an **interim status post-closure** permit.” None of the available records demonstrate that the amended Part A application met change of operational control requirements for interim status facilities that are set forth in 40 C.F.R. § 270.72(a)(4).

<sup>28</sup> Under the State’s hazardous waste management program, the term “**closure**” is defined to mean “the **cessation of operation of a solid waste management facility** and the act of securing the facility so that it will pose no significant threat to human health or the environment.” N.C.G.S. § 130A-290(a)(2).

program, the statement appears to be contradicted by information in various relevant public records. The following are factual statements based upon application of the relevant information in the context of the State's hazardous waste management program:

- SGC-TX operated the facility during a period of time between March 30, 1982 until December 30, 1986,
  - SGC-MN operated the facility during a period of time between December 30, 1986 until June 30, 1988.
  - SGC-TX and SGC-MN operated solely as RCRA "generators."
  - Heatcraft operated the facility during a period of time between June 30, 1988 until the Section received Heatcraft's certification of closure of the solid waste management facility, which the Section accepted by January 16, 1992.
- b. Paragraph B.3. The statement that AMI conducted any manufacturing at the Facility during the period of 1982 to 1988, is contradicted by available public records. As noted above, the entity that was renamed AMI was not originally incorporated until March 9, 1992. Thus, it is impossible for that entity to have conducted any manufacturing at the facility from 1982 to 1988.
- c. Paragraph B.4. For the same reasons noted above, the statement that AMI, as "SnyderGeneral Corporation," sold the facility to Heatcraft in June 1988 is contradicted by available public records. Because the entity that was renamed AMI was not originally incorporated until March 9, 1992, it is impossible for it to have sold the Facility to Heatcraft in 1988.

Additionally, and as noted above, records in the Section's public file (Laserfiche) do not support that "Lennox International Inc." conducted any manufacturing operations at the Facility.

- d. Paragraph B.5. As noted above, available public records do not support a contention that "Lennox International Inc." ever owned the subject property.
4. **Section III.C.** Port City is not identified to be a party to the proposed Order. But, this subsection contains information to which only Port City, not Daikin, would reasonably be expected to stipulate. Therefore, the entire subsection does not appear to be properly included in the Order.
5. **Section III.D.7.** The second sentence of this provision asserts that AMI "retained financial responsibility for the environmental liability associated with the Facility as an 'operator.'" This statement is not supported by, and appears to be contradicted by, records in the Laserfiche system. An August 25, 1988 letter from Heatcraft's outside counsel (Thompson & Knight) to the HW Branch notes that the property transfer from SGC-MN to Heatcraft involved "an assets transaction." A March 14, 2011 email from a representative of Lennox Int'l to the Section's Adam Ulishney includes, as an attachment, a letter from the same Lennox Int'l representative to Port City. That letter, in relevant

part, references an “indemnification agreement” between Heatcraft and AMI (but, for the reasons noted above, would have originally been between Heatcraft and SGC-MN).<sup>29</sup>

Notably, Order No. 6 of the AOC states: “**Heatcraft, Inc. shall**, within sixty (60) calendar days of the effective date of this Order (i.e., by June 17, 1989), **demonstrate financial assurance for closure and/or post-closure**, in accordance with 40 CFR 265.143 codified at 10 NCAC 10F .0033, and 265.145, codified at 10 NCAC 10F .0033.” Further, Order No. 10 states: “Heatcraft, Inc. shall complete, sign, and submit a Part A application to the Branch as described in this section and Sections 270.70 through 270.73.” And, pursuant to the requirement of Order No. 10, Heatcraft submitted a Part A application, which is dated January 5, 1989, and which identifies Heatcraft as the **sole** owner and operator of the facility.

The Laserfiche system does not contain any records that demonstrate that the requirements of 40 CFR 270.72(a)(4) with respect to change of operational control were complied with, for either the purported amendment to Heatcraft’s Part A application or for any transfer of Heatcraft’s obligation to provide financial assurance for closure and/or post-closure.<sup>30</sup> So, without more, the facts would tend to suggest that AMI, as successor by merger to SGC-MN, would be, at most, a guarantor for Heatcraft’s financial assurance obligations under the AOC, which is not an owner or operator.<sup>31</sup> The total liability of any RCRA closure / post-closure financial assurance guarantor “shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator.”<sup>32</sup>

6. **Section III.D.7–9.** These paragraphs address various requirements of Heatcraft under the AOC, including, among other items, filing of a Part A application and also closure and post-closure plans. But, the Proposed Alternate Mechanism does not mention that, in 1993, Heatcraft filed a contested case (93 EHR 1021), in which it essentially argued (a) that the agency’s Hazardous Waste Section (the respondent) lacked RCRA jurisdiction associated with the area of the accidental spill of TCA that was the subject of the AOC (which the DEHNR HW Section referred to as “the Hazardous Waste Management Area” of the facility in the January 16, 1992 letter to Heatcraft), and (b) that the AOC was null and void. The ALJ’s December 20, 1993 Final Decision, which grated the DEHNR

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<sup>29</sup> The term “indemnify” means to “*reimburse* (another) for a loss suffered because of a third party’s or one’s own act or default,” or to “promise to *reimburse* (another) for such loss.” BLACK’S LAW DICTIONARY 783–84 (8th ed. 2004). The term “indemnity” means “reimbursement or compensation for loss, damage, or liability in tort; esp., the right of a party who is secondarily liable to recover from the party who is primarily liable for reimbursement of expenditures paid to a third party for injuries” *Id.* at 784. And the term “reimbursement” means “repayment” *Id.* at 1312.

<sup>30</sup> With respect to financial assurance, that provision states: “**Upon demonstration** to the Director by the new owner or operator of compliance with Subpart H, the **Director shall notify** the old owner or operator **in writing** that he no longer needs to comply with Subpart H as of the date of demonstration.” 40 C.F.R. § 270.72(a)(4).

<sup>31</sup> “[T]he term “guarantor” means any person, **other than the owner or operator**, who provides evidence of financial responsibility for an owner or operator under this section.” RCRA § 3004(t)(4), 42 U.S.C. § 6924(t)(4).

<sup>32</sup> *Id.* § 6924(t)(3) (“The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this chapter”). Because the AOC was terminated, *see infra* note 33, it appears this requirement should have terminated as well.

HW Section's motion to dismiss, states that Heatcraft "has **withdrawn from the AOC** and the **AOC is no longer effective as a consent order.**"<sup>33</sup>

There is no other formal, fully-executed permit (or enforceable document in lieu of a permit) available from the Laserfiche system between December 1993 until August 2012 that assigns obligations associated with RCRA post-closure or RCRA financial assurance.<sup>34</sup> Because the requirements of the former AOC terminated approximately twenty years before the Current Alternate Mechanism was executed, it does not appear appropriate to reference those terminated obligations for any purpose in the Proposed Alternate Mechanism (or in the Current Alternate Mechanism).<sup>35</sup>

The first sentence of paragraph 9 references "the ditch ***impoundment*** (hazardous waste management unit)" as being covered with a "multimedia cap." The Fact Sheet states that the "Facility is currently maintaining a regulated disposal unit (former ***impoundment***) under 40 CFR 265.117 [incorporated at 15A NCAC 13A.0110]." Other provisions of the Proposed Alternate Mechanism, however, identify the area as a landfill as a result of section 265.197, which applies to tank systems, not surface impoundments. There are significant differences between tank systems and surface impoundments under the RCRA regulations incorporated into the State Rules.<sup>36</sup> There are no records in the Laserfiche system related to any entity operating a surface impoundment at the Facility. There are records that indicate that there were tanks at the Facility, which Heatcraft removed.

7. **Section III.F.1.** The last sentence of this paragraph is not supported by information in relevant public records. The indenture recorded on April 2, 1982, is between "The Singer Company" and "Snyder General Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of Texas." There is no reference in the instrument to "Climate Control."<sup>37</sup>
8. **Section IV.A.7.** This paragraph references the term "active portion," defined under section 260.10, but disregards the definition of "closed portion," which (a) is expressly mentioned in the referenced "active portion" definition, and (b) is defined under section 260.10 to mean "that portion of a facility which an owner or operator has **closed in accordance with the approved facility closure plan** and all applicable closure requirements. (See also 'active portion' and 'inactive portion')." The Laserfiche system includes Heatcraft's November 1991 certification of closure of the area of the his-

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<sup>33</sup> Final Decision/Order of Dismissal, 93 EHR 1021, at 2 (Dec. 20, 1993) (F.G. Morrison, Jr., Senior ALJ). The decision is included in "HW\_F\_NCD057451270\_11110101\_AXD\_AXH (9).pdf," which is available from the Laserfiche system public records associated with the Facility.

<sup>34</sup> AMI and the NCDENR Hazardous Waste Section signed an Alternate Mechanism document that was effective as of August 14, 2012.

<sup>35</sup> Additional references to actions purportedly conducted to "present" "as per the 1989 AOC," which was no longer effective after 1993, are set forth in Section III.G-H.

<sup>36</sup> "Surface impoundments," which are a type of land disposal unit, are regulated under Subpart K of 40 CFR Part 265 (sections 265.220 to 265.231). Subpart K sets forth design and operating requirements for owners or operators of surface impoundments. Significantly, under Subpart K, such owners or operators must submit notice to the agency "at least sixty days **prior to receiving waste,**" and then "**must file a part B application** within six months of receipt of such notice." The Laserfiche system does not contain such records for this Facility.

<sup>37</sup> On November 8, 1982, SGC-TX filed an Assumed Name Certificate with the Secretary of State of the State of Texas to conduct business under the trade name "Climate Control."

torical accidental spill of TCA.<sup>38</sup> Therefore, it appears inappropriate to use the “active portion” definition in connection with a capped area for which Heatcraft certified closure.

9. **Section IV.A.8.** This paragraph references the term “corrective action,” which the document, under Section II.B, links to 40 CFR 264.101 and 265.121.

- a. The requirements of 40 CFR 264.101 apply to the “owner or operator of a facility **seeking a permit for the treatment, storage or disposal of hazardous waste.**” For the following reasons, EPA guidance and records available in the Laserfiche system appear to indicate that the applicability provisions of section 264.101 may not be met with respect to this Facility.

*First*, as noted in Comment 16, below, the Section has classified the Facility as a disposal facility, and the EPA has issued guidance that states land disposal (i.e., operation) does not occur where, as is the case with this Facility, waste has been capped in place. The available public records do not indicate that Daikin is seeking to dispose hazardous waste at the Facility.

*Second*, the EPA’s July 1998 RCRA Permit Policy Compendium, Volume 10, contains an agency memorandum dated July 9, 1984, which states “a permit application is considered withdrawn when EPA, or an authorized state, approves the closure plan for the facility following an inspection, a public notice of the plan, and a response to comments.” RPPC No. 9521.1984(03), (Emphasis in original).<sup>39</sup> In an October 16, 1990 letter to Heatcraft, the DEHNR Hazardous Waste Section’s Permitting Branch (“**Permitting Branch**”) confirms approval of Heatcraft’s closure plan following review, a public notice of closure plan, and the passing of a comment period of thirty (30) days without any comments.<sup>40</sup>

Applying the facts and EPA guidance, it appears: (i) Heatcraft’s January 5, 1990 Part A application should have been deemed to be withdrawn approximately ten months before Sirrine submitted the purported amendment to that form, rendering the 1991 amendment unnecessary and a nullity, and, therefore, (ii) no entity has been “seeking a permit” for the disposal of hazardous waste at the Facility. Unless other records or facts exist that are counter to the available public records, the provisions of section 264.101 do not seem to apply to the Facility.

- b. The text of section 265.121 applies to “Owners and operators who are **subject to the requirement to obtain a post-closure permit under 40 CFR 270.1(c)**, but who obtain enforceable documents in lieu of post-closure permits, as provided under 40 CFR 270.1(c)(7).” As addressed in various locations of these comments, it does not appear that Daikin meets the referenced applicability criteria for section 270.1(c), and if that is indeed the case, then the provisions of section 265.121 would not be applicable to it either.

<sup>38</sup> See *supra* note 28. Additionally, the RFA Report addressed in Section III.H.2 of the Proposed Alternate Mechanism refers to this area as “SWMU 4 – Capped Waste Management Unit.”

<sup>39</sup> In its response to FOIA Online Request No. EPA-HQ-2017-002077 (see Attachment 5), the EPA indicates that it was not able to locate any EPA guidance or policy records that would displace RPPC No. 9521.1984(03) or otherwise indicate that a RCRA permit application is not considered withdrawn when EPA, or an authorized state, approves a closure plan for a RCRA the facility as addressed in the guidance document.

<sup>40</sup> In a letter to Heatcraft dated September 25, 1991, which also is posted to the Laserfiche system, Mr. Hamner confirms approval, after the very same steps, for Heatcraft’s post-closure plan.

10. **Section IV.B.2.** Addressed in the main body of the letter, under Comment Section II.
11. **Section IV.C.2.** Addressed in the main body of the letter, under Comment Section II.
12. **Section IV.D.1–7.** These paragraphs refer to the two historical spill events that are addressed in Section III.D, and assert that the ditch where the two accidental spills occurred is a RCRA landfill, citing the tank system-related provisions of 40 CFR 265.197. There are at least three memorandums addressed to the DEHNR Hazardous Waste Section from 1993–1994 available on the Laserfiche system in which two different law firms and one well-established national environmental consultant assert that the TCA spill area “should not be classified as a RCRA Hazardous Waste Management Unit.” Heatcraft’s prehearing statement in the 1993 contested case (93 EHR 1021), and its counsel’s legal memorandum dated June 29, 1994, cite to specific rulings from the N.C. Office of Administrative Hearings that support the contention that the location of the accidental TCA spills should not be considered a RCRA hazardous waste management unit.

If the plain language of the hazardous waste management program provisions establish that the site of the two accidental spills from the 1980s is actually a landfill, as addressed in the AOC, the agency would arguably have had legal basis to initiate enforcement action related to section 270.1 against Heatcraft, after Heatcraft terminated the AOC. The Laserfiche system does not include copies of any such enforcement records. As addressed in Comment 13, below, the facts do not appear to support that Heatcraft, or any other entity, ever operated a landfill at the Facility.

13. **Section IV.D.8.** This paragraph cites 40 CFR 270.1(c) (incorporated by Rule 13A.0113(a)), and asserts “the Facility is required to have a post-closure permit or be bound by the requirements of this Order.” The statement is linked to the information in paragraphs 1–7, 11 of Section IV.D of the Proposed Alternate Mechanism. Following are three observations that relate to the linked information, which appear to indicate that section 270.1(c) may not properly apply to Daikin.
  - a. The referenced requirement of section 270.1(c) applies to “[o]wners and operators of . . . **landfills** . . . **that** [1] received waste after July 26, 1982, **or** [2] that certified closure . . . after January 26, 1983.” Section 270.1(c) also states that “[o]wners and operators of hazardous waste management units **must have permits during the active life** (including the closure period) of the unit.”<sup>43</sup> Significantly, the definition of “permit,” which applies to 40 CFR parts 270, 271 and 124), “does **not** include RCRA **interim status** (subpart G of this part), or any permit which has not been the subject of final agency action, such as a draft permit or a proposed permit.”<sup>44</sup> Closure, under the State’s hazardous waste management program, is defined to mean the “**cessation of operation** of a solid waste management facility.”<sup>45</sup>

Thus, an owner or operator must clearly operate a landfill **before** it can close a landfill, and the owner or operator must have a final RCRA operating permit in order to operate the landfill before closing it. There is no record of a final RCRA operating permit in place at any time before

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<sup>43</sup> “**Active life** of a facility means the period from the **initial receipt** of hazardous waste at the facility **until** the Regional Administrator receives **certification of final closure**.” 40 C.F.R. § 260.10.

<sup>44</sup> *Id.* § 270.2 (definition of “permit”); *see supra* note 27 (addressing “interim status”).

<sup>45</sup> N.C.G.S. § 130A-290(a)(2).



Heatcraft certified closure of the area now designated as SWMU-4. Notably, paragraph 4 states that Heatcraft operated a tank system, which was “then ‘considered to be a landfill’” under section 265.117. Because Heatcraft operated a **tank system** rather than a landfill, it logically follows that Heatcraft closed a **tank system**, not a landfill. So, it does not appear that the requirements of the plain and clear language of section 270.1(c) apply to this Facility.

Additionally, the descriptions of the Facility in each of the Part A application forms that predate August 1991 indicate it is an HVAC-related manufacturing plant, not a landfill.<sup>46</sup> The amended Part A application that Sirrine submitted via a letter dated August 8, 1991, contains the following facility description: “The facility ceased operation in April 1991.” So, the relevant, publicly available records do not support that Heatcraft (i.e., the entity that certified closure of what is referred to in the AOC as the hazardous waste management unit),<sup>47</sup> or any other entity, operated a landfill before operations at the facility ceased.

- b. The relevant portion of the tank system requirements set forth in section 265.197 states:

If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in paragraph (a) of this section, then the owner or operator must close the tank system and perform post-closure care in accordance with the **closure and post-closure care requirements that apply to landfills** (§ 265.310). In addition, **for the purposes of closure, post-closure, and financial responsibility**, such a tank system is then considered to be a landfill, and the owner or operator must meet all of the **requirements for landfills specified in subparts G and H of this part** [i.e., 40 CFR Part 265].<sup>48</sup>

It is significant that the requirements of section 265.197 do *not* specify a duty for the owner or operator to also meet the requirements of 40 CFR Part 270 (or any particular regulation within Part 270).<sup>49</sup> Had the U.S. EPA intended interim status tank systems closed under section 265.197 to be subject to the permitting requirements of section 270.1(c) (or of Part 270 generally), it could easily have included such language, either when originally promulgated in 1980, or in connection with any of the ten amendments to that provision since 1980. But, it did not do so.

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<sup>46</sup> The Part A application (EPA Form 3510-1 and 3510-3) that Heatcraft signed on January 5, 1989, uses codes for tank processes (S02), landfill process (D80), and incinerator process (T03). The form also indicates that the Heatcraft property is an *existing* facility that first began operations on *November 10, 1989*. There are no records in the Laserfiche system prior to that date that indicate that Singer, SGC-TX, SGC-MN, or Heatcraft ever operated either a landfill or a waste *incinerator* at the facility. Thus, the referenced information in Heatcraft’s 1989 Part A application appears to be incorrect, or very questionable.

<sup>47</sup> The area designated in the AOC to be the “hazardous waste management unit” at “the Site” is defined to be the portion of the property “affected or contaminated by the accidental spill” that occurred on July 24, 1987, which is designated as SWMU-4 in the Proposed Alternate Mechanism.

<sup>48</sup> 40 C.F.R. § 265.197(b). Section 265.310 has two requirements: final cover and post-closure care.

<sup>49</sup> The lack of any reference to Part 270 is logical, as section 265.197 applies to interim status facilities and the definition of “permit” under Part 270 excludes such facilities. *See supra* note 44 and accompanying text.

- c. The Proposed Alternate Mechanism states that “the **Facility** is required” to meet the contended ‘permit or Order’ requirement. The permit requirement of section 270.1(c) that is cited in the document applies to “[o]wners **and** operators of . . . landfills” that meet either of the two applicability elements. The substitution of “Facility” for “owner and operator” is imprecise and should be modified to match the applicable regulatory requirement, to the extent that section 270.1(c) may apply to Daikin.

14. **Section V.A.** This subsection requires “an updated Part A application.” Refer to Comment Nos. 5 and 9, and Footnote 27, above.
15. **Section VII.** The provisions of this section relate to Daikin “allow[ing] the Section, or its representatives to access the Facility at reasonable times.” But, as AMI (now known as Daikin) explains in its July 21, 2004 letter to the U.S. EPA (responding to the EPA’s June 29, 2004 Request for Information regarding the Facility), AMI has “not had control of the facility since [Heatcraft purchased the facility],” and further explained that AMI “**does not have the authority to grant EPA access to the facility**,” and also that it “does not have information relating to the operation of the facility before [it purchased the facility] or after [it sold it].”<sup>50</sup>
16. **Section XXI.C.** This provision requires Daikin to continue paying the annual activity fee specified in N.C.G.S. 130A-294.1. Paragraphs 4–5 of Section IV.D of the Proposed Alternate Mechanism refer to the Facility as a “‘land disposal facility,’” and various records available from the Laserfiche system indicate that the Section has classified the Facility as a “disposer” for purposes of the annual activity fee, subject to the provision set forth in 130A-294.1(k).<sup>51</sup>

- a. The text of 130A-294.1(k) states:

A **storage, treatment, or disposal facility** shall pay an annual activity fee of one thousand six hundred eighty dollars (\$1,680) for each activity.

According to EPA guidance, disposal “is intended to be the final step in handling hazardous waste.”<sup>52</sup> “A facility is ‘in operation’ if it is actually managing hazardous waste.”<sup>53</sup> The EPA has interpreted “**active management**” to mean “[a]ny treatment, storage, or disposal of wastes . . . in [an applicable hazardous waste management] unit . . .”<sup>54</sup> Additionally, according to the EPA, “[l]and disposal occurs when hazardous wastes are **placed into** a unit,” but **does not oc-**

<sup>50</sup> Although the Section is not included in the distribution list of the July 21, 2004 letter, the letter is posted on the Laserfiche system. There is no indication of whether the Section obtained a copy from AMI or the EPA.

<sup>51</sup> The Section issued a Short Form Compliance Order with Administrative Penalty (Docket # 2001-191) to AMI, dated September 27, 2001, which states that AMI “owned and operated a hazardous waste disposal facility at the [Facility] during the year beginning July 1, 2000, and ending June 30, 2001” and, pursuant to **130A-294.1(k)**, was obligated to “pay an annual activity fee” for disposal activity, plus an additional penalty amount. A May 28, 2004 letter and annual activity invoice as “Disposer” indicates that AMI paid “disposal fees” for 2001, 2002 and 2003 totaling \$3,600. Copies of the order and letter are posted to the Laserfiche system.

<sup>52</sup> RCRA Online (“**RO**”) No. 11029 (Aug. 17, 1983).

<sup>53</sup> RO No. 12782 (Nov. 13, 1986), at 3.

<sup>54</sup> See RO No. 11826 (Apr. 6, 1994), at 1.

cur when hazardous wastes are, among other listed activities, “**capped in place.**”<sup>55</sup> Because the November 1991 certification of closure — of what the Proposed Alternate Mechanism refers to as the “hazardous waste management unit” — involved installation of a cap and final cover, EPA guidance indicates that no disposal activity is occurring at the Facility.

The interpretation that no disposal activity is occurring at the Facility is further supported by the instructions for the most current RCRA Part A application form. Facilities that “**do[ ] not receive waste from other generators** and ship[ ] all waste off-site for management within the regulatory timeframe” *or* are “**only involved with on-going post-closure activities**” are directed to mark “No” in the “Treater, Storer or Disposer of Hazardous Waste” block of Section 10.A of the RCRA Subtitle C Site Identification Form (in other words, the entity should mark that the subject site is not a RCRA TSD facility).<sup>56</sup>

There is no indication in the various records available on the Laserfiche system that Daikin receives wastes at the Facility from other generators, or disposes of any hazardous waste at the Facility. Additionally, the information in various records available on the Laserfiche system (as well as the language of Section IV.E.1 of the Proposed Alternate Mechanism) indicates that Daikin’s connection with Facility is only involved with on-going post-closure activities. It therefore appears that the Facility should not properly be considered to be an active “disposal facility,” and no disposal “activity” is occurring at the Facility.<sup>57</sup>

- b. As noted in connection with Comment 3, above, the Section has classified the Facility to be an “interim status” facility. Interim status “is granted to **facilities** . . . [it] is **not** granted on a **unit-by unit basis.**”<sup>58</sup> If a non-permitted facility does not meet the requirements of interim status, or loses interim status classification, it **cannot** treat, store or dispose of hazardous waste **without first** being issued a final RCRA operating permit.<sup>59</sup>

Additionally, “RCRA land disposal units that do not [timely] submit Part B applications and certifications of compliance (i.e. that lose interim status) **must immediately cease operation** and comply with applicable closure requirements.”<sup>60</sup> The statutory loss of interim status provision “requires that the affected unit or facility **stop receipt of hazardous waste**” and “[r]esumption of waste receipt cannot occur **unless and until** a final RCRA permit is issued.”<sup>61</sup>

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<sup>55</sup> *Id.* at 2.

<sup>56</sup> RCRA Haz. Waste Part A Permit Application; Instructions and Form, 8700-23 (Jan. 2015), at 19, 22–23.

<sup>57</sup> The term “activity” is defined to mean “the quality or state of being active.” WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 54 (1986). Thus, there is no disposal activity, because no active disposal occurs with respect to a closed and capped unit. *See supra* notes 28, 52–56 and accompanying text.

<sup>58</sup> RO No. 12524 (Jan. 1, 1986).

<sup>59</sup> *See* 46 FR 60446, 60447–48 (Dec. 10, 1981); 51 FR 10146, 10168 (Mar. 24, 1986).

<sup>60</sup> Compare OSWER Directive No. 9930.0-1 (Oct. 16, 1985), at 1, 3 [**“LOIS Enforcement Strategy”**] with 40 CFR § 270.73 (incorporated under Rule 13A.0113(j)); *see also* attachment A to LOIS Enforcement Strategy, at 2 (“you must **cease placement of wastes** into the land disposal units in question . . .”).

<sup>61</sup> RO No. 12814 (Dec. 10, 1986), at 2.

In a March 13, 1984 letter, the HW Branch informed SGC-TX: “You are advised that this plant has been *denied* a permit as a hazardous waste treatment, storage, or disposal facility and its interim status has been formally *terminated*.”<sup>62</sup>

Although it appears that Heatcraft could not attain interim status under the plain and clear language of the governing RCRA statute,<sup>63</sup> to the extent that it may potentially have been possible, the Laserfiche system does not include any record of Heatcraft timely submitting a Part B application and certification of compliance, which means that it would have lost any such interim status in the mid-1990s.<sup>64</sup>

There are no records available on the Laserfiche system that indicate that Daikin is disposing hazardous waste at the Facility, or receiving any hazardous waste for disposal at the Facility (there are no records of any other entity having done so either). There is also no record of Daikin (or any other entity) having been issued a final RCRA operating permit for disposal of hazardous waste at the Facility. Because the Facility’s interim status was terminated in 1984, no entity could dispose of hazardous waste at the Facility without first receiving a final RCRA operating permit. The lack of any record of Daikin being issued a final RCRA operating permit further demonstrates that the Facility should not properly be considered to be an active “disposal facility,” and no disposal “activity” is occurring at the Facility.<sup>65</sup>

Based upon the information set forth in this Comment 16, it does not appear that Daikin meets the applicability criteria for 130A-294.1(k).

[End of Attachment 1 comments; Attachment 2 follows]

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<sup>62</sup> Letter from O.W. Strickland, Head, Solid & Haz. Waste Mgmt. Branch, to Donald Knowlton, Snyder General Corp. (Mar. 13, 1984). A copy of the letter is included with the attachments to Open Records Request No. NCORR-2017-01-01, which was submitted to the Section’s Public Information Officer via an email dated January 31, 2017.

<sup>63</sup> Compare RCRA § 3005(e), 42 U.S.C. § 6925(e) with notes 58–61, *supra*; 45 Fed. Reg. 76630, 76631–32 (Nov. 19, 1980) (RCRA § 3010(a) notification required by August 18, 190 for activity associated with hazardous wastes made subject to regulation on May 19, 1980); and 45 Fed. Reg. 33084, 33123, 33133 (May 19, 1980) (promulgating regulations that first identify 1,1,1-trichloroethane (TCA) as a hazardous waste).

<sup>64</sup> EPA guidance indicates that loss of interim status is “self implementing” where owners and operators of land disposal facilities fail to timely meet these requirements. See OSWER Directive No. 9930.0-1 (Oct. 19, 1985) (communicating EPA’s Loss of Interim Status Enforcement Strategy). Additionally, the public records available from the Laserfiche system do not include any information that indicates that Lennox International, *see supra* notes 26–27, or Daikin ever submitted a Part B application and certification of compliance.

<sup>65</sup> See *supra* note 57 and accompanying text.

**Attachment 2**  
**Certified Copy of 15A NCAC 13A**

**(attachment to September 7, 2016 letter from Julie S. Woosley)**



Waste Management  
ENVIRONMENTAL QUALITY

PAT MCCRORY  
*Governor*

DONALD R. VAN DER VAART  
*Secretary*

MICHAEL SCOTT  
*Director*

September 7, 2016

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. David E. Kitts  
Vice President – Environmental  
Mannington Mills, Inc.  
75 Mannington Mills Road  
P.O. Box 30  
Salem, New Jersey 08079-0030

Mr. Alejandro Sanchez  
President  
Condumex, Incorporated  
2590 – 114<sup>th</sup> Street, Suite 200  
Grand Prairie, Texas 75050

Reference: Call for RCRA Part B Permit Application  
Former Porcelanite Facility  
Lexington, North Carolina  
EPA ID Number: NCD 986 181 451

Dear Mr. Kitts and Mr. Sanchez:

This letter is a formal request for your Part B permit application for a post-closure permit under the Federal Resource Conservation and Recovery Act (RCRA) as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). This request is made pursuant to 40 CFR 270.1(c), incorporated by reference in 15A NCAC 13A .0113(a), requiring that owners and operators of hazardous waste management units must have permits during the active life (including closure period) of the unit. Specifically, owners and operators of surface impoundments, landfills, land treatment units, and waste pile units that received waste after January 26, 1983, or that certify closure after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal (i.e., clean closure). Therefore, a post-closure permit is required under the authority of 40 CFR 270.10 (as adopted in 15A NCAC 13A .0113(b)) and North Carolina General Statute 130A-Article 9 (Solid Waste Management Act as amended).

The Part B permit application must describe the regulated units (i.e., the Waste Tile Pile and the Sludge Settling Ponds) and all of the Solid Waste Management Units (SWMUs) identified in the RCRA Facility Assessment (RFA) and any additional SWMUs created or discovered since the RFA. The application also must describe remedial activities undertaken by the Facility for both the regulated units and the SWMUs. To assist you in preparing this application, we have enclosed a copy of:

1. The most recent NC Hazardous Waste Management Rules, and
2. A disk containing copies of the application checklists that the Section will use to evaluate your Part B permit application.

For your convenience, the Part A form 8700-23 with the associated instructions can be downloaded from the following EPA website: <http://www.epa.gov/epaoswer/hazwaste/data/form8700/forms.htm>.

The information required for a Part B permit application (40 CFR 270.28 as adopted in 15A NCAC 13A .0113(b)) must be submitted within six (6) months of receipt of this letter, or before March 6, 2017. Failure to submit the Part B permit application by the due date may result in substantial penalty. The original and six (6) electronic copies of the

application must be submitted to the Section at the following mailing address:

Julie S. Woosley, Hazardous Waste Section Chief  
NC Division of Waste Management  
Hazardous Waste Section  
1646 Mail Service Center  
Raleigh, NC 27699-1646

In accordance with 40 CFR 2.201 – 2.215 and 2.305, as adopted, in relevant part, in 15A NCAC 13A .0104, you may claim confidentiality for certain information in your Part B permit application. This requires that the claim of confidentiality be substantiated. In order to claim confidentiality, the following considerations apply.

1. Determine whether or not the claim of confidentiality can be substantiated, then substantiate it (concerning each type of information claimed) by addressing the applicable element of 40 CFR 2.208, as adopted in 15A NCAC 13A .0104;
2. Precisely describe which information is claimed as confidential or stamp each page that contains such information with the words "CONFIDENTIAL" or "CONFIDENTIAL BUSINESS INFORMATION";
3. Package all pages containing confidential information separately from your total Part B application package. This means that your Part B submitted would consist of two (2) packages: (a) the Part B application without confidential information, and (b) the portion of your Part B application that has been claimed as confidential; and
4. State clearly in your transmittal letter that confidential information is included.

If no claim of confidentiality is made at the time of submission, the State and US EPA may make the information available to the public without further notice. If a claim is asserted and substantiated, the information will be treated according to the procedures in 40 CFR 2 as adopted in 15A NCAC 13A .0104.

The Section encourages you to submit your renewal application in the format of the application checklists (see attached CD). The Section also recommends that a pre-application meeting be conducted to discuss the process and answer any questions that arise.

If you have any questions or comments, please do not hesitate to contact Mary Siedlecki at 919-707-8208 or via email at [mary.siedlecki@ncdenr.gov](mailto:mary.siedlecki@ncdenr.gov).

Respectfully,



Julie S. Woosley, Section Chief  
Hazardous Waste Section  
Division of Waste Management, NC DEQ

Enclosed: The most recent NC Hazardous Waste Management Rules, and  
Disk containing application checklists used to evaluate Part B permit applications.

cc: David Kitts, Mannington Mills, Inc.  
Tony Shaw, Mannington Mills, Inc.  
Cathy Cralle-Jones, Law Offices of F. Bryan Brice, Jr.

Pam Goodwin, Saul Ewing LLP  
Alejandro Sanchez, Condomex, Incorporated  
Bud McCarty, Hazardous Waste Section Branch Head  
Mary Siedlecki, Hazardous Waste Section Project Manager  
Mark Burnette, Hazardous Waste Section Inspector  
Linda Nelson, Department of Environmental Quality  
Jay Osborne, Department of Environmental Quality



*State of North Carolina  
Office of Administrative Hearings*

*Certification*

*I hereby certify the attached 11 sheets to be a true copy of*

*15A NCAC 13A – HAZARDOUS WASTE MANAGEMENT*

*The original of which is filed in this office in conformance  
with Chapter 150B of the General Statutes of the State of  
North Carolina.*

*In witness whereof, I authorize this  
certification and affix the official seal of  
the North Carolina Office of  
Administrative Hearings at Raleigh,  
this 26th day of August 2016.*

*Julian Mann, III  
Chief Administrative Law Judge, Director*

*By:*

*Dana Vojtko*

**CHAPTER 13 – SOLID WASTE MANAGEMENT**  
**SUBCHAPTER 13A - HAZARDOUS WASTE MANAGEMENT**  
**SECTION .0100 - HAZARDOUS WASTE**

**15A NCAC 13A .0101 GENERAL**

(a) The Hazardous Waste Section of the Division of Waste Management shall administer the hazardous waste management program for the State of North Carolina.

(b) In applying the federal requirements incorporated by reference throughout this Subchapter, the following substitutions or exceptions shall apply:

When used in any of the federal regulations incorporated by reference throughout this Subchapter, except where the context requires references to remain without substitution (including with regard to forms, publications and regulations concerning international shipments, variances from land disposal restrictions and other program areas over which the federal government retains sole authority): "United States" shall mean the State of North Carolina; "Environmental Protection Agency," "EPA" and "Agency" shall mean the Department of Environmental Quality; and "Administrator," "Regional Administrator," "Assistant Administrator" and "Director" shall mean the Secretary of the Department of Environmental Quality. The North Carolina Solid Waste Management Act and other applicable North Carolina General Statutes set forth in G.S. 130A shall be substituted for references to "the Solid Waste Disposal Act," "the Resource Conservation and Recovery Act" and "RCRA" where required by context.

(c) In the event that there are inconsistencies or duplications in the requirements of those Federal rules incorporated by reference throughout this Subchapter and the State rules set out in this Subchapter, the provisions incorporated by reference shall prevail except where the State rules are more stringent.

(d) 40 CFR 260.1 through 260.3 (Subpart A), "General," are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 260.11, "References," is incorporated by reference including subsequent amendments and editions.

(f) Copies of all materials in this Subchapter may be inspected or obtained as follows:

- (1) Persons interested in receiving rule-making notices concerning the North Carolina Hazardous Waste Management Rules shall submit a written request to the Hazardous Waste Section, 1646 Mail Service Center, Raleigh, N.C. 27699-1646. Upon receipt of each request, individuals shall be placed on a mailing list to receive notices.
- (2) Material incorporated by reference in the Federal Register may be obtained from the U. S. Government Bookstore's website at <https://bookstore.gpo.gov/products/sku/769-004-00000-9?otid=> for a cost of nine hundred twenty nine dollars (\$929.00) and at <http://www.epa.gov/laws-regulations/regulations>, free of charge.
- (3) The North Carolina Hazardous Waste Management Rules may be obtained from the Hazardous Waste Section at the cost to the Section.
- (4) All material is available for inspection at the Department of Environmental Quality, Hazardous Waste Section, 217 West Jones Street, Raleigh, NC and at <http://deq.nc.gov/about/divisions/waste-management/waste-management-rules/hazardous-waste-rules>.

*History Note: Authority G.S. 130A-294(c); 150B-21.6;*

*Eff. September 1, 1979;*

*Amended Eff. June 1, 1989; June 1, 1988; August 1, 1987; May 1, 1987;*

*Transferred and Recodified from 10 NCAC 10F .0001 Eff. April 4, 1990;*

*Amended Eff. October 1, 1993; April 1, 1993; October 1, 1992; December 1, 1991;*

*Recodified from 15A NCAC 13A .0001 Eff. December 20, 1996;*

*Amended Eff. July 1, 2016; August 1, 2004; August 1, 2000; August 1, 1998; August 1, 1997.*

**15A NCAC 13A .0102 DEFINITIONS**

(a) The definitions contained in G.S. 130A-290 apply to this Subchapter.

(b) 40 CFR 260.10 (Subpart B), "Definitions," is incorporated by reference, including subsequent amendments and editions except that the definitions for "Disposal," "Landfill," "Management or hazardous waste management," "Person," "Sludge," "Storage," and "Treatment" are defined by G.S. 130A-290 and are not incorporated by reference and the definition in 260.10 for "Contained" is not incorporated by reference.

(c) The following definition shall be substituted for "Contained": "Contained" means held in a unit (including a land-based unit as defined in this subpart) that meets the following criteria:

- (1) the unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials or hazardous constituents originating from the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. "Unpermitted releases" means releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, windblown dust, fugitive air emissions, and catastrophic unit failures;
  - (2) the unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and
  - (3) the unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.
  - (4) hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts 264 or 265 are presumptively contained.
- (d) The following additional definitions shall apply throughout this Subchapter:
- (1) "Section" means the Hazardous Waste Section, in the Division of Waste Management, Department of Environmental Quality.
  - (2) The "Department" means the Department of Environmental Quality (DEQ).
  - (3) "Division" means the Division of Waste Management (DWM).
  - (4) "Long Term Storage" means the containment of hazardous waste for an indefinite period of time in a facility designed to be closed with the hazardous waste in place.
  - (5) "Off-site Recycling Facility" means any facility that receives shipments of hazardous waste from off-site to be recycled or processed for recycling through any process conducted at the facility, but does not include any facility owned or operated by a generator of hazardous waste solely to recycle their own waste.

*History Note:* Authority G.S. 130A-294(c); 150B-21.6;  
Eff. September 1, 1979;  
Amended Eff. June 1, 1989; June 1, 1988; February 1, 1987; October 1, 1986;  
Transferred and Recodified from 10 NCAC 10F .0002 Eff. April 4, 1990;  
Amended Eff. April 1, 1993; October 1, 1990; August 1, 1990;  
Recodified from 15A NCAC 13A .0002 Eff. December 20, 1996;  
Amended Eff. August 1, 2000;  
Temporary Amendment Eff. January 1, 2009;  
Amended Eff. July 1, 2010;  
Temporary Amendment Eff. December 1, 2015;  
Amended Eff. July 1, 2016.

#### 15A NCAC 13A .0103 PETITIONS - PART 260

- (a) All rulemaking petitions for changes in this Subchapter shall be made in accordance with 15A NCAC 02I .0501.
- (b) In applying the federal requirements incorporated by reference in Paragraph (c) of this Rule, 15A NCAC 02I .0501 shall be substituted for references to 40 CFR 260.20.
- (c) 40 CFR 260.21 through 260.43 (Subpart C), "Rulemaking Petitions," are incorporated by reference including subsequent amendments and editions.

*History Note:* Authority G.S. 130A-294(c); 150B-21.6;  
Eff. November 19, 1980;  
Amended Eff. June 1, 1988; May 1, 1987; January 1, 1986; October 1, 1985;  
Transferred and Recodified from 10 NCAC 10F .0028 Eff. April 4, 1990;  
Amended Eff. April 1, 1993; November 1, 1991; October 1, 1990;  
Recodified from 15A NCAC 13A .0003 Eff. December 20, 1996;  
Amended Eff. August 1, 2000;  
Temporary Amendment Eff. January 1, 2009;

*Amended Eff. July 1, 2010;  
Temporary Amendment Eff. December 1, 2015;  
Amended Eff. July 1, 2016.*

**15A NCAC 13A .0104 PUBLIC INFORMATION - PART 2**

(a) The provisions concerning requests for information in 40 CFR 2.100 to 2.121 (Subpart A) are incorporated by reference including subsequent amendments and editions, except that 40 CFR 2.106(b), 2.112(f), and 2.120 are not incorporated by reference.

(b) The following address for the Headquarters Freedom of Information Operations (1105) is substituted for the address 1200 Pennsylvania Ave., N.W., Washington, DC 20460 in 40 CFR 2.106(a) and 2.213(a): Division of Waste Management, 1646 Mail Service Center, Raleigh, NC 27699-1646.

(c) The provisions concerning confidentiality of business information in 40 CFR 2.201 to 2.311 (Subpart B) are incorporated by reference including subsequent amendments and editions, except that 40 CFR 2.209 (b) and (c), 2.301, 2.302, 2.303, 2.304, 2.306, 2.307, 2.308, 2.309, 2.310 and 2.311 are not incorporated by reference.

*History Note: Authority G.S. 130A-294(c); 150B-21.6;  
Eff. January 1, 1986;  
Amended Eff. June 1, 1988;  
Transferred and Recodified from 10 NCAC 10F .0040 Eff. April 4, 1990;  
Amended Eff. August 1, 1990;  
Recodified from 15A NCAC 13A .0005 Eff. August 30, 1990;  
Amended Eff. April 1, 1993; October 1, 1990;  
Recodified from 15A NCAC 13A .0004 Eff. December 20, 1996;  
Amended Eff. May 1, 2002; August 1, 2000.*

**15A NCAC 13A .0105 GENERAL PROGRAM REQUIREMENTS - PART 124**

(a) 40 CFR 124.1 through 124.21 (Subpart A), "General Program Requirements", are incorporated by reference including subsequent amendments and editions, except that 40 CFR 124.2(c) is not incorporated by reference.

(b) 40 CFR 124.31 through 124.33 (Subpart B), "Specific Procedures Applicable to RCRA Permits", are incorporated by reference including subsequent amendments and editions, except that 40 CFR 124.31(a), 124.32(a) and 124.33(a) are not incorporated by reference.

- (1) The following shall be substituted for the provisions of 40 CFR 124.31(a) which are not incorporated by reference:
  - (A) Applicability. The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units and shall also apply to RCRA part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this Section, a "significant change" is any change that would qualify as a class 3 permit modification under 40 CFR 270.42.
  - (B) The requirements of this Section do not apply to permit modifications under 40 CFR 270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.
- (2) The following shall be substituted for the provisions of 40 CFR 124.32(a) which are not incorporated by reference:
  - (A) Applicability. The requirements of this Section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units.
  - (B) The requirements of this Section shall apply to RCRA part B applications seeking renewal of permits for such units under 40 CFR 270.51.
  - (C) The requirements of this Section do not apply to permit modifications under 40 CFR 270.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.
- (3) The following shall be substituted for the provisions of 40 CFR 124.33(a) which are not incorporated by reference: Applicability. The requirements of this Section apply to all applications seeking RCRA permits for hazardous waste management units.

*History Note: Authority G.S. 130A-294(c); 150B-21.6;*



*Eff. November 19, 1980;*

*Amended Eff. February 1, 1988; October 1, 1986; July 1, 1986; July 1, 1985;*

*Transferred and Recodified from 10 NCAC 10F .0035 Eff. April 4, 1990;*

*Recodified from 15A NCAC 13A .0006 Eff. August 30, 1990;*

*Amended Eff. April 1, 1993; October 1, 1990;*

*Recodified from 15A NCAC 13A .0005 Eff. December 20, 1996;*

*Amended Eff. August 1, 1998.*

**15A NCAC 13A .0106 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261**

- (a) 40 CFR 261.1 through 261.9 (Subpart A), "General" are incorporated by reference including subsequent amendments and editions.
- (b) 40 CFR 261.10 through 261.11 (Subpart B), "Criteria for Identifying the Characteristics of Hazardous Waste and for Listing Hazardous Waste" are incorporated by reference including subsequent amendments and editions.
- (c) 40 CFR 261.20 through 261.24 (Subpart C), "Characteristics of Hazardous Waste" are incorporated by reference including subsequent amendments and editions.
- (d) 40 CFR 261.30 through 261.37 (Subpart D), "Lists of Hazardous Wastes" are incorporated by reference including subsequent amendments and editions.
- (e) 40 CFR 261.38 through 261.41 (Subpart E), "Exclusions/Exemptions" are incorporated by reference including subsequent amendments and editions.
- (f) 40 CFR 261.140 through 261.151 (Subpart H), "Financial Requirements for Management of Excluded Hazardous Secondary Materials" are incorporated by reference including subsequent amendments and editions.
- (g) 40 CFR 261.170 through 261.179 (Subpart I), "Use and Management of Containers" are incorporated by reference including subsequent amendments and editions.
- (h) 40 CFR 261.190 through 261.200 (Subpart J), "Tank Systems" are incorporated by reference including subsequent amendments and editions.
- (i) 40 CFR 261.400 through 261.420 (Subpart M), "Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials" are incorporated by reference including subsequent amendments and editions.
- (j) 40 CFR 261.1030 through 261.1049 (Subpart AA), "Air Emission Standards for Process Vents" are incorporated by reference including subsequent amendments and editions.
- (k) 40 CFR 261.1050 through 261.1079 (Subpart BB), "Air Emission Standards for Equipment Leaks" are incorporated by reference including subsequent amendments and editions.
- (l) 40 CFR 261.1080 through 261.1090 (Subpart CC), "Air Emission Standards for Tanks and Containers" are incorporated by reference including subsequent amendments and editions.
- (m) The Appendices to 40 CFR Part 261 are incorporated by reference including subsequent amendments and editions.

*History Note: Authority G.S. 130A-294(c); 150B-21.6;*

*Eff. November 19, 1980;*

*Amended Eff. June 1, 1988; February 1, 1988; December 1, 1987;*

*August 1, 1987;*

*Transferred and Recodified from 10 NCAC 10F .0029 Eff. April 4, 1990;*

*Recodified from 15A NCAC 13A .0007 Eff. August 30, 1990;*

*Amended Eff. January 1, 1996; April 1, 1993; February 1, 1992;*

*December 1, 1990;*

*Recodified from 15A NCAC 13A .0006 Eff. December 20, 1996;*

*Amended Eff. April 1, 2007; August 1, 2000;*

*Temporary Amendment Eff. January 1, 2009;*

*Amended Eff. July 1, 2010;*

*Temporary Amendment Eff. December 1, 2015;*

*Amended Eff. July 1, 2016.*

**15A NCAC 13A .0107 STDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE - PART 262**

- (a) 40 CFR 262.10 through 262.12 (Subpart A), "General" are incorporated by reference including subsequent amendments and editions.

- (b) 40 CFR 262.20 through 262.27 (Subpart B), "The Manifest" are incorporated by reference including subsequent amendments and editions.
- (c) 40 CFR 262.30 through 262.34 (Subpart C), "Pre-Transport Requirements" are incorporated by reference including subsequent amendments and editions.
- (d) 40 CFR 262.40 through 262.44 (Subpart D), "Recordkeeping and Reporting" are incorporated by reference including subsequent amendments and editions. In addition, a generator shall keep records of inspections and results of inspections required by Section 262.34 for at least three years from the date of the inspection.
- (e) 40 CFR 262.50 through 262.58 (Subpart E), "Exports of Hazardous Waste" are incorporated by reference including subsequent amendments and editions.
- (f) 40 CFR 262.60 (Subpart F), "Imports of Hazardous Waste" is incorporated by reference including subsequent amendments and editions.
- (g) 40 CFR 262.70 (Subpart G), "Farmers" is incorporated by reference including subsequent amendments and editions.
- (h) 40 CFR 262.80 through 262.89 (Subpart H), "Transfrontier Shipments of Hazardous Waste for Recovery within the OECD" are incorporated by reference including subsequent amendments and editions, except that 40 CFR 262.89(e) is not incorporated by reference.
- (i) 40 CFR 262.200 through 262.216 (Subpart K), "Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities" is incorporated by reference including subsequent amendments and editions.
- (j) The appendix to 40 CFR Part 262 is incorporated by reference including subsequent amendments and editions.

*History Note:* Authority G.S. 130A-294(c); 150B-21.6;  
 Eff. November 19, 1980;  
 Amended Eff. December 1, 1988; June 1, 1988; August 1, 1987; May 1, 1987;  
 Transferred and Recodified from 10 NCAC 10F.0030 Eff. April 4, 1990;  
 Amended Eff. August 1, 1990;  
 Recodified from 15A NCAC 13A.0008 Eff. August 30, 1990;  
 Amended Eff. April 1, 1993; October 1, 1990;  
 Recodified from 15A NCAC 13A.0007 Eff. December 20, 1996;  
 Amended Eff. July 1, 2016; April 1, 2010; November 1, 2007; January 1, 2007; April 1, 2001;  
 August 1, 1998.

#### 15A NCAC 13A.0108 STDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE - PART 263

- (a) 40 CFR 263.10 through 263.12 (Subpart A), "General" are incorporated by reference including subsequent amendments and editions.
- (b) 40 CFR 263.20 through 263.25 (Subpart B), "Compliance With the Manifest System and Recordkeeping" are incorporated by reference including subsequent amendments and editions.
- (c) Upon discovering a significant manifest discrepancy, the transporter shall attempt to reconcile the discrepancy with the waste generator (e.g. with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the transporter on the 16th day shall submit to the Department a letter describing the discrepancy and attempts to reconcile it with a copy of the manifest or shipping paper at issue.
- (d) "Manifest discrepancies" means differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a transporter actually transports. Significant discrepancies in quantity shall be as follows: for bulk waste, variations greater than 10 percent in weight; and, for batch waste, any variation in piece count (e.g. a discrepancy of one drum in a truckload). Significant discrepancies in type are obvious differences that may be discovered by inspection or waste analysis (e.g. waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper).
- (e) 40 CFR 263.30 through 263.31 (Subpart C), "Hazardous Waste Discharges" are incorporated by reference including subsequent amendments and editions.

*History Note:* Authority G.S. 130A-294(c); 150B-21.6;  
 Eff. November 19, 1980;  
 Amended Eff. June 1, 1988; August 1, 1987; May 1, 1987; October 1, 1986;  
 Transferred and Recodified from 10 NCAC 10F.0031 Eff. April 4, 1990;  
 Recodified from 15A NCAC 13A.0009 Eff. August 30, 1990;

*Amended Eff. April 1, 1993; October 1, 1990;  
Recodified from 15A NCAC 13A .0008 Eff. December 20, 1996;  
Amended Eff. July 1, 2016; August 1, 2000.*

**15A NCAC 13A .0109 STANDARDS FOR OWNERS/OPERATORS OF HWTSD FACILITIES - PART  
264**

- (a) Any person who treats, stores or disposes of hazardous waste shall comply with the requirements set forth in this Section. The treatment, storage or disposal of hazardous waste is prohibited except as provided in this Section.
- (b) 40 CFR 264.1 through 264.4 (Subpart A), "General", are incorporated by reference including subsequent amendments and editions.
- (c) 40 CFR 264.10 through 264.19 (Subpart B), "General Facility Standards", are incorporated by reference including subsequent amendments and editions.
- (d) 40 CFR 264.30 through 264.37 (Subpart C), "Preparedness and Prevention", are incorporated by reference including subsequent amendments and editions.
- (e) 40 CFR 264.50 through 264.56 (Subpart D), "Contingency Plan and Emergency Procedures", are incorporated by reference including subsequent amendments and editions.
- (f) 40 CFR 264.70 through 264.77 (Subpart E), "Manifest System, Recordkeeping, and Reporting", are incorporated by reference including subsequent amendments and editions.
- (g) 40 CFR 264.90 through 264.101 (Subpart F), "Releases From Solid Waste Management Units", are incorporated by reference including subsequent amendments and editions. For the purpose of this incorporation by reference, "January 26, 1983" shall be substituted for "July 26, 1982" contained in 40 CFR 264.90(a)(2).
- (h) 40 CFR 264.110 through 264.120 (Subpart G), "Closure and Post-Closure", are incorporated by reference including subsequent amendments and editions.
- (i) 40 CFR 264.140 through 264.151 (Subpart H), "Financial Requirements", are incorporated by reference including subsequent amendments and editions, except that 40 CFR 264.143(a)(3), (a)(4), (a)(5), (a)(6), 40 CFR 264.145(a)(3), (a)(4), (a)(5), and 40 CFR 264.151(a)(1), Section 15 are not incorporated by reference.
- (1) The following shall be substituted for the provisions of 40 CFR 264.143(a)(3) which were not incorporated by reference:  
The owner or operator shall deposit the full amount of the closure cost estimate at the time the fund is established. Within one year of February 1, 1987, an owner or operator using a closure trust fund established prior to February 1, 1987, shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or shall obtain other financial assurance as specified in this Section.
- (2) The following shall be substituted for the provisions of 40 CFR 264.143(a)(6) which were not incorporated by reference:  
After the trust fund is established, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.
- (3) The following shall be substituted for the provisions of 40 CFR 264.145(a)(3) which were not incorporated by reference:  
(A) Except as otherwise provided in Part (i)(3)(B) of this Rule, the owner or operator shall deposit the full amount of the post-closure cost estimate at the time the fund is established.  
(B) If the Department finds that the owner or operator of an inactive hazardous waste disposal unit cannot provide financial assurance for post-closure through any other option (e.g. surety bond, letter of credit, or corporate guarantee), a plan for annual payments to the trust fund over the term of the RCRA post-closure permit may be established by the Department as a permit condition.
- (4) The following additional requirement shall apply:  
The trustee shall notify the Department of payment to the trust fund, by certified mail within 10 days following said payment to the trust fund. The notice shall contain the name of the Grantor, the date of payment, the amount of payment, and the current value of the trust fund.

(j) 40 CFR 264.170 through 264.179 (Subpart I), "Use and Management of Containers", are incorporated by reference including subsequent amendments and editions.

(k) 40 CFR 264.190 through 264.200 (Subpart J), "Tank Systems", are incorporated by reference including subsequent amendments and editions.

(l) The following are requirements for Surface Impoundments:

(1) 40 CFR 264.220 through 264.232 (Subpart K), "Surface Impoundments", are incorporated by reference including subsequent amendments and editions.

(2) The following are additional standards for surface impoundments:

- (A) The liner system shall consist of at least two liners;
- (B) Artificial liners shall be equal to or greater than 30 mils in thickness;
- (C) Clayey liners shall be equal to or greater than five feet in thickness and have a maximum permeability of  $1.0 \times 10^{-7}$  cm/sec;
- (D) Clayey liner soils shall have the same characteristics as described in Subparts (r)(4)(B)(ii), (iii), (iv), (vi) and (vii) of this Rule;
- (E) A leachate collection system shall be constructed between the upper liner and the bottom liner;
- (F) A leachate detection system shall be constructed below the bottom liner; and
- (G) Surface impoundments shall be constructed in such a manner to prevent landsliding, slippage or slumping.

(m) 40 CFR 264.250 through 264.259 (Subpart L), "Waste Piles", are incorporated by reference including subsequent amendments and editions.

(n) 40 CFR 264.270 through 264.283 (Subpart M), "Land Treatment", are incorporated by reference including subsequent amendments and editions.

(o) 40 CFR 264.300 through 264.317 (Subpart N), "Landfills", are incorporated by reference including subsequent amendments and editions.

(p) A long-term storage facility shall meet groundwater protection, closure and post-closure, and financial requirements for disposal facilities as specified in Paragraphs (g), (h), and (i) of this Rule.

(q) 40 CFR 264.340 through 264.351 (Subpart O), "Incinerators", are incorporated by reference including subsequent amendments and editions.

(r) The following are additional location standards for facilities:

(1) In addition to the location standards set forth in 15A NCAC 13A .0109(c), the Department, in determining whether to issue a permit for a hazardous waste management facility, shall consider the risks posed by the proximity of the facility to water table levels, flood plains, water supplies, public water supply watersheds, mines, natural resources such as wetlands, endangered species habitats, parks, forests, wilderness areas, and historical sites, and population centers and shall consider whether provision has been made for buffer zones as required by this Rule. The Department shall also consider ground water travel time, soil pH, soil cation exchange capacity, soil composition and permeability, slope, climate, local land use, transportation factors such as proximity to waste generators, route, route safety, and method of transportation, aesthetic factors such as the visibility, appearance, and noise level of the facility; potential impact on air quality, existence of seismic activity and cavernous bedrock. The basis for issuing or denying the permit are found in 40 CFR 264 as adopted by reference in this Rule.

(2) The following minimum separation distances shall be required of all hazardous waste management facilities except that existing facilities shall be required to meet these minimum separation distances to the maximum extent feasible:

- (A) All hazardous waste management facilities shall be located at least 0.25 miles from institutions including but not limited to schools, health care facilities and prisons, unless the owner or operator can demonstrate that no risks shall be posed by the proximity of the facility.
- (B) All hazardous waste treatment and storage facilities shall comply with the following separation distances: all hazardous waste shall be treated and stored a minimum of 50 feet from the property line of the facility; except that all hazardous waste with ignitable, incompatible or reactive characteristics shall be treated and stored a minimum of 200 feet from the property line of the facility if the area adjacent to the facility is zoned for any use other than industrial or is not zoned.



- (C) All hazardous waste landfills, long-term storage facilities, land treatment facilities and surface impoundments, shall comply with the following separation distances:
  - (i) All hazardous waste shall be located a minimum of 200 feet from the property line of the facility;
  - (ii) Each hazardous waste landfill, long-term storage or surface impoundment facility shall be constructed so that the bottom of the facility is 10 feet or more above the historical high ground water level. The historical high ground water level shall be determined by measuring the seasonal high ground water levels and predicting the long-term maximum high ground water level from published data on similar North Carolina topographic positions, elevations, geology, and climate; and
  - (iii) All hazardous waste shall be located a minimum of 1,000 feet from the zone of influence of any existing off-site ground water well used for drinking water, and outside the zone of influence of any existing or planned on-site drinking water well.
- (D) Hazardous waste storage and treatment facilities for liquid waste that is classified as TC toxic, toxic, or acutely toxic and is stored or treated in tanks or containers shall not be located:
  - (i) in the recharge area of an aquifer which is designated as an existing sole drinking water source as defined in the Safe Drinking Water Act, Section .1424(e) [42 U.S.C. 300h-3(e)] unless an adequate secondary containment system, as described in 40 CFR 264 as adopted by reference in this Rule, is constructed, and after consideration of applicable factors in Subparagraph (r)(3) of this Rule, the owner or operator can demonstrate no risk to public health;
  - (ii) within 200 feet of surface water impoundments or surface water stream with continuous flow as defined by the United States Geological Survey;
  - (iii) in an area that will allow direct surface or subsurface discharge to WS-I, WS-II or SA waters or a Class III Reservoir as defined in 15A NCAC 02B .0200 and 15A NCAC 18C .0102;
  - (iv) in an area that will allow direct surface or subsurface discharge to the watershed for a Class I or II Reservoir as defined in 15A NCAC 18C .0102;
  - (v) within 200 feet horizontally of a 100-year floodplain elevation;
  - (vi) within 200 feet of a seismically active area as defined in Paragraph (c) of this Rule; and
  - (vii) within 200 feet of a mine, cave, or cavernous bedrock.
- (3) The Department shall require any hazardous waste management facility to comply with greater separation distances or other protective measures when necessary to avoid risks posed by the proximity of the facility to water table levels, flood plains, water supplies, public water supply watersheds, mines, natural resources such as wetlands, endangered species habitats, parks, forests, wilderness areas, and historical sites, and population centers or to provide a buffer zone as required by this Rule. The Department shall also require protective measures when necessary to avoid unreasonable risks posed by the soil pH, soil cation exchange capacity, soil composition and permeability, climate, transportation factors such as proximity to waste generators, route, route safety, and method of transportation, aesthetic factors such as the visibility, appearance, and noise level of the facility, potential impact on air quality, and the existence of seismic activity and cavernous bedrock. In determining whether to require greater separation distances or other protective measures, the Department shall consider the following factors:
  - (A) All proposed hazardous waste activities and procedures to be associated with the transfer, storage, treatment or disposal of hazardous waste at the facility;
  - (B) The type of hazardous waste to be treated, stored, or disposed of at the facility;
  - (C) The volume of waste to be treated, stored, or disposed of at the facility;
  - (D) Land use issues including the number of permanent residents in proximity to the facility and their distance from the facility;
  - (E) The adequacy of facility design and plans for containment and control of sudden and non-sudden accidental events in combination with adequate off-site evacuation of potentially adversely impacted populations;

- (F) Other land use issues including the number of institutional and commercial structures such as airports and schools in proximity to the facility, their distance from the facility, and the particular nature of the activities that take place in those structures;
  - (G) The lateral distance and slope from the facility to surface water supplies or to watersheds draining directly into surface water supplies;
  - (H) The vertical distance, and type of soils and geologic conditions separating the facility from the water table;
  - (I) The direction and rate of flow of ground water from the sites and the extent and reliability of on-site and nearby data concerning seasonal and long-term groundwater level fluctuations;
  - (J) Potential air emissions including rate, direction of movement, dispersion and exposure, whether from planned or accidental, uncontrolled releases; and
  - (K) Any other relevant factors.
- (4) The following are additional location standards for landfills, long-term storage facilities and hazardous waste surface impoundments:
- (A) A hazardous waste landfill, long-term storage, or a surface impoundment facility shall not be located:
    - (i) In the recharge area of an aquifer which is an existing sole drinking water source;
    - (ii) Within 200 feet of a surface water stream with continuous flow as defined by the United States Geological Survey;
    - (iii) In an area that will allow direct surface or subsurface discharge to WS-I, WS-II or SA waters or a Class III Reservoir as defined in 15A NCAC 02B .0200 and 15A NCAC 18C .0102;
    - (iv) In an area that will allow direct surface or subsurface discharge to a watershed for a Class I or II Reservoir as defined in 15A NCAC 18C .0102;
    - (v) Within 200 feet horizontally of a 100-year flood hazard elevation;
    - (vi) Within 200 feet of a seismically active area as defined in Paragraph (c) of this Rule; and
    - (vii) Within 200 feet of a mine, cave or cavernous bedrock.
  - (B) A hazardous waste landfill or long-term storage facility shall be located in geologic formations with the following soil characteristics:
    - (i) The depth of the unconsolidated soil materials shall be equal to or greater than 20 feet;
    - (ii) The percentage of fine-grained soil material shall be equal to or greater than 30 percent passing through a number 200 sieve;
    - (iii) Soil liquid limit shall be equal to or greater than 30;
    - (iv) Soil plasticity index shall be equal to or greater than 15;
    - (v) Soil compacted hydraulic conductivity shall be a maximum of  $1.0 \times 10^{-7}$  cm/sec;
    - (vi) Soil Cation Exchange Capacity shall be equal to or greater than 5 milliequivalents per 100 grams;
    - (vii) Soil Potential Volume Change Index shall be equal to or less than 4; and
    - (viii) Soils shall be underlain by a geologic formation having a rock quality designation equal to or greater than 75 percent.
  - (C) A hazardous waste landfill or long-term storage facility shall be located in areas of low to moderate relief to the extent necessary to prevent landsliding or slippage and slumping. The site may be graded to comply with this standard.
- (5) All new hazardous waste impoundments that close with hazardous waste residues left in place shall comply with the standards for hazardous waste landfills in Subparagraph (r)(4) of this Rule unless the applicant can demonstrate that equivalent protection of public health and environment is afforded by some other standard.
- (6) The owners and operators of all new hazardous waste management facilities shall construct and maintain a minimum of two observation wells, one upgradient and one downgradient of the proposed facility; and shall establish background groundwater concentrations and monitor annually for all hazardous wastes that the owner or operator proposes to store, treat, or dispose at the facility.

- (7) The owners and operators of all new hazardous waste facilities shall demonstrate that the community has had an opportunity to participate in the siting process by complying with the following:

- (A) The owners and operators shall hold at least one public meeting in the county in which the facility is to be located to inform the community of all hazardous waste management activities including but not limited to: the hazardous properties of the waste to be managed; the type of management proposed for the wastes; the mass and volume of the wastes; and the source of the wastes; and to allow the community to identify specific health, safety and environmental concerns or problems expressed by the community related to the hazardous waste activities associated with the facility. The owners and operators shall provide a public notice of this meeting at least 30 days prior to the meeting. Public notice shall be documented in the facility permit application. The owners and operators shall submit as part of the permit application a complete written transcript of the meeting, all written material submitted that represents community concerns, and all other relevant written material distributed or used at the meeting. The written transcript and other written material submitted or used at the meeting shall be submitted to the local public library closest to and in the county of the proposed site with a request that the information be made available to the public.
- (B) For the purposes of this Rule, public notice shall include: notification of the boards of county commissioners of the county where the proposed site is to be located and all contiguous counties in North Carolina; a legal advertisement placed in a newspaper or newspapers serving those counties; and provision of a news release to at least one newspaper, one radio station, and one TV station serving these counties. Public notice shall include the time, place, and purpose of the meetings required by this Rule.
- (C) No less than 30 days after the first public meeting transcript is available at the local public library, the owners and operators shall hold at least one additional public meeting in order to attempt to resolve community concerns. The owners and operators shall provide public notice of this meeting at least 30 days prior to the meeting. Public notice shall be documented in the facility permit application. The owners and operators shall submit as part of the permit application a complete written transcript of the meeting, all written material submitted that represents community concerns, and all other relevant written material distributed or used at the meeting.
- (D) The application, written transcripts of all public meetings and any additional material submitted or used at the meetings, and any additions or corrections to the application, including any responses to notices of deficiencies shall be submitted to the local library closest to and in the county of the proposed site, with a request that the information be made available to the public until the permit decision is made.
- (E) The Department shall consider unresolved community concerns in the permit review process and impose final permit conditions based on sound scientific, health, safety, and environmental principles as authorized by applicable laws or rules.

(s) 40 CFR 264.550 through 264.555 (Subpart S), "Special Provisions for Cleanup", are incorporated by reference including subsequent amendments and editions.

(t) 40 CFR 264.570 through 264.575 (Subpart W), "Drip Pads", are incorporated by reference including subsequent amendments and editions.

(u) 40 CFR 264.600 through 264.603 (Subpart X), "Miscellaneous Units", are incorporated by reference including subsequent amendments and editions.

(v) 40 CFR 264.1030 through 264.1049 (Subpart AA), "Air Emission Standards for Process Vents", are incorporated by reference including subsequent amendments and editions.

(w) 40 CFR 264.1050 through 264.1079 (Subpart BB), "Air Emission Standards for Equipment Leaks", are incorporated by reference including subsequent amendments and editions.

(x) 40 CFR 264.1080 through 264.1091 (Subpart CC), "Air Emission Standards for Tanks, Surface Impoundments, and Containers", are incorporated by reference including subsequent amendments and editions.

(y) 40 CFR 264.1100 through 264.1102 (Subpart DD), "Containment Buildings", are incorporated by reference including subsequent amendments and editions.

(z) 40 CFR 264.1200 through 264.1202 (Subpart EE), "Hazardous Waste Munitions and Explosives Storage", are incorporated by reference including subsequent amendments and editions.

(aa) Appendices to 40 CFR Part 264 are incorporated by reference including subsequent amendments and editions.

*History Note:* Authority G.S. 130A-294(c); 150B-21.6;  
Eff. November 19, 1980;  
Amended Eff. November 1, 1989; June 1, 1989; December 1, 1988; February 1, 1988;  
Transferred and Recodified from 10 NCAC 10F .0032 Eff. April 4, 1990;  
Amended Eff. August 1, 1990;  
Recodified from 15A NCAC 13A .0010 Eff. August 30, 1990;  
Amended Eff. July 1, 1995; October 1, 1993; April 1, 1993; October 1, 1992;  
Recodified from 15A NCAC 13A .0009 Eff. December 20, 1996;  
Amended Eff. August 1, 2004; April 1, 2001; April 1, 1999.

**15A NCAC 13A .0110 INTERIM STATUS STDS FOR OWNERS-OP OF HWTSD FACILITIES - PART  
265**

(a) 40 CFR 265.1 through 265.4 (Subpart A), "General", are incorporated by reference including subsequent amendments and editions.

(b) 40 CFR 265.10 through 265.19 (Subpart B), "General Facility Standards", are incorporated by reference including subsequent amendments and editions.

(c) 40 CFR 265.30 through 265.37 (Subpart C), "Preparedness and Prevention", are incorporated by reference including subsequent amendments and editions, except that 265.35 is not incorporated by reference.

The following shall be substituted for the provisions of 265.35.

Required aisle space: The owner or operator must maintain aisle space of at least two feet to allow the unobstructed movement of personnel, fire prevention equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency.

(d) 40 CFR 265.50 through 265.56 (Subpart D), "Contingency Plan and Emergency Procedures", are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 265.70 through 265.77 (Subpart E), "Manifest System, Recordkeeping, and Reporting", are incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 265.90 through 265.94 (Subpart F), "Ground-Water Monitoring", are incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 265.110 through 265.121 (Subpart G), "Closure and Post-Closure", are incorporated by reference including subsequent amendments and editions.

(h) 40 CFR 265.140 through 265.151 (Subpart H), "Financial Requirements", are incorporated by reference including subsequent amendments and editions, except that 40 CFR 265.143(a)(3), (a)(4), (a)(5), (a)(6), and 40 CFR 265.145(a)(3), (a)(4), (a)(5), are not incorporated by reference.

(1) The following shall be substituted for the provisions of 40 CFR 265.143(a)(3) which were not incorporated by reference: The owner or operator shall deposit the full amount of the closure cost estimate at the time the fund is established. By November 19, 1981, an owner or operator using a closure trust fund established prior to November 19, 1980 shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or shall obtain other financial assurance as specified in this Section.

(2) The following shall be substituted for the provisions of 40 CFR 265.143(a)(6) which were not incorporated by reference: After the trust fund is established, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this Section to cover the difference; and

(3) The following shall be substituted for the provisions of 40 CFR 265.145(a)(3) which were not incorporated by reference:

(A) Except as otherwise provided in Part (h)(3)(B) of this Rule, the owner or operator shall deposit the full amount of the post-closure cost estimate at the time the fund is established.

(B) If the Department finds that the owner or operator of an inactive hazardous waste disposal unit cannot provide financial assurance for post-closure through any other option

(e.g. surety bond, letter of credit, or corporate guarantee), a plan for annual payments to the trust fund during the interim status period shall be established by the Department by use of an Administrative Order.

- (i) 40 CFR 265.170 through 265.178 (Subpart I), "Use and Management of Containers", are incorporated by reference including subsequent amendments and editions. Additionally, the owner or operator shall keep records and results of required inspections for at least three years from the date of the inspection.
- (j) 40 CFR 265.190 through 265.202 (Subpart J), "Tank Systems", are incorporated by reference including subsequent amendments and editions.
- (k) 40 CFR 265.220 through 265.231 (Subpart K), "Surface Impoundments", are incorporated by reference including subsequent amendments and editions.
- (l) 40 CFR 265.250 through 265.260 (Subpart L), "Waste Piles", are incorporated by reference including subsequent amendments and editions.
- (m) 40 CFR 265.270 through 265.282 (Subpart M), "Land Treatment", are incorporated by reference including subsequent amendments and editions.
- (n) 40 CFR 265.300 through 265.316 (Subpart N), "Landfills", are incorporated by reference including subsequent amendments and editions.
- (o) 40 CFR 265.340 through 265.352 (Subpart O), "Incinerators", are incorporated by reference including subsequent amendments and editions.
- (p) 40 CFR 265.370 through 265.383 (Subpart P), "Thermal Treatment", are incorporated by reference including subsequent amendments and editions.
- (q) 40 CFR 265.400 through 265.406 (Subpart Q), "Chemical, Physical, and Biological Treatment", are incorporated by reference including subsequent amendments and editions.
- (r) 40 CFR 265.440 through 265.445 (Subpart W), "Drip Pads", are incorporated by reference including subsequent amendments and editions.
- (s) 40 CFR 265.1030 through 265.1049 (Subpart AA), "Air Emission Standards for Process Vents", are incorporated by reference including subsequent amendments and editions.
- (t) 40 CFR 265.1050 through 265.1079 (Subpart BB), "Air Emission Standards for Equipment Leaks", are incorporated by reference including subsequent amendments and editions.
- (u) 40 CFR 265.1080 through 265.1091 (Subpart CC), "Air Emission Standards for Tanks, Surface Impoundments, and Containers", are incorporated by reference including subsequent amendments and editions.
- (v) 40 CFR 265.1100 through 265.1102 (Subpart DD), "Containment Buildings", are incorporated by reference including subsequent amendments and editions.
- (w) 40 CFR 265.1200 through 265.1202 (Subpart EE), "Hazardous Waste Munitions and Explosives Storage", are incorporated by reference including subsequent amendments and editions.
- (x) Appendices to 40 CFR Part 265 are incorporated by reference including subsequent amendments and editions.

*History Note: Authority G.S. 130A-294(c); 150B-21.6;  
Eff. November 19, 1980;  
Amended Eff. June 1, 1989; December 1, 1988; June 1, 1988; February 1, 1988;  
Transferred and Recodified from 10 NCAC 10F .0033 Eff. April 4, 1990;  
Recodified from 15A NCAC 13A .0011 Eff. August 30, 1990;  
Amended Eff. July 1, 1995; April 1, 1993; October 1, 1992; February 1, 1992;  
Recodified from 15A NCAC 13A .0010 Eff. December 20, 1996;  
Amended Eff. November 1, 2005; August 1, 2000; April 1, 1999.*

**15A NCAC 13A .0111 STDS FOR THE MGMT OF SPECIFIC HW/TYPES HWM FACILITIES - PART 266**

- (a) 40 CFR 266.20 through 266.23 (Subpart C), "Recyclable Materials Used in a Manner Constituting Disposal", are incorporated by reference including subsequent amendments and editions.
- (b) 40 CFR 266.70 (Subpart F), "Recyclable Materials Utilized for Precious Metal Recovery", is incorporated by reference including subsequent amendments and editions. Off-site recycling facilities that receive materials described in 40 CFR 266.70(a) must manage the materials in accordance with and comply with 40 CFR 262.34(a) as incorporated by reference in 15A NCAC 13A .0107(c), excluding 262.34(a)(3). Each container and tank holding recyclable materials at off-site precious metal recycling facilities must be labeled or marked with the words, "Recyclable Material".



- (c) 40 CFR 266.80 (Subpart G), "Spent Lead-Acid Batteries Being Reclaimed", is incorporated by reference including subsequent amendments and editions.
- (d) 40 CFR 266.100 through 266.112 (Subpart H), "Hazardous Waste Burned in Boilers and Industrial Furnaces", are incorporated by reference including subsequent amendments and editions.
- (e) 40 CFR 266.200 through 266.206 (Subpart M), "Military Munitions", are incorporated by reference including subsequent amendments and editions.
- (f) 40 CFR 266.210 through 266.360 (Subpart N), "Conditional Exemption for Low-Level Mixed Waste Storage, Treatment, Transportation and Disposal", are incorporated by reference including subsequent amendments and editions.
- (g) Appendices to 40 CFR Part 266 are incorporated by reference including subsequent amendments and editions.

*History Note:* Authority G.S. 130A-294(c); 150B-21.6;  
 Eff. July 1, 1985;  
 Amended Eff. June 1, 1990; June 1, 1988; February 1, 1988; December 1, 1987;  
 Transferred and Recodified from 10 NCAC 10F .0039 Eff. April 4, 1990;  
 Recodified from 15A NCAC 13A .0012 Eff. August 30, 1990;  
 Amended Eff. January 1, 1995; April 1, 1993; August 1, 1991; October 1, 1990;  
 Recodified from 15A NCAC 13A .0011 Eff. December 20, 1996;  
 Amended Eff. April 1, 2006; April 1, 2003; April 1, 1999; August 1, 1998.

#### **15A NCAC 13A .0112 LAND DISPOSAL RESTRICTIONS - PART 268**

- (a) 40 CFR 268.1 through 268.14 (Subpart A), "General", are incorporated by reference including subsequent amendments and editions.
- (b) 40 CFR 268.20 through 268.39 (Subpart C), "Prohibitions on Land Disposal", are incorporated by reference including subsequent amendments and editions, except that 40 CFR 268.21 through 268.29 are not incorporated by reference.
- (c) 40 CFR 268.40 through 268.49 (Subpart D), "Treatment Standards", are incorporated by reference including subsequent amendments and editions.
- (d) 40 CFR 268.50 (Subpart E), "Prohibitions on Storage", is incorporated by reference including subsequent amendments and editions.
- (e) Appendices to 40 CFR Part 268 are incorporated by reference including subsequent amendments and editions.

*History Note:* Authority G.S. 130A-294(c); 150B-21.6;  
 Eff. August 1, 1987;  
 Amended Eff. June 1, 1990; June 1, 1989; June 1, 1988; February 1, 1988;  
 Transferred and Recodified from 10 NCAC 10F .0042 Eff. April 4, 1990;  
 Recodified from 15A NCAC 13A .0013 Eff. August 30, 1990;  
 Amended Eff. April 1, 1995; January 1, 1995; April 1, 1993; February 1, 1991;  
 Recodified from 15A NCAC 13A .0012 Eff. December 20, 1996;  
 Amended Eff. November 1, 2005; August 1, 2000; August 1, 1998.

#### **15A NCAC 13A .0113 THE HAZARDOUS WASTE PERMIT PROGRAM - PART 270**

- (a) 40 CFR 270.1 through 270.6 (Subpart A), "General Information", are incorporated by reference including subsequent amendments and editions. For the purpose of this incorporation by reference, "January 26, 1983" shall be substituted for "July 26, 1982" contained in 40 CFR 270.1(c).
- (b) 40 CFR 270.10 through 270.29 (Subpart B), "Permit Application", are incorporated by reference including subsequent amendments and editions.
- (c) The following are additional Part B information requirements for all hazardous waste facilities:
  - (1) Description and documentation of the public meetings as required in 15A NCAC 13A .0109(r)(7);
  - (2) A description of the hydrological and geological properties of the site including flood plains, depth to water table, ground water travel time, seasonal and long-term groundwater level fluctuations, proximity to public water supply watersheds, consolidated rock, soil pH, soil cation exchange capacity, soil characteristics and composition and permeability, existence of cavernous bedrock and seismic activity, slope, mines, climate, location and withdrawal rates of surface water users within the immediate drainage basin and well water users within a one mile radius of the facility;

- water quality information of both surface and groundwater within 1000 feet of the facility, and a description of the local air quality;
- (3) A description of the facility's proximity to and potential impact on wetlands, endangered species habitats, parks, forests, wilderness areas, historical sites, mines, and air quality;
  - (4) A description of local land use including residential, industrial, commercial, recreational, agricultural and the proximity to schools and airports;
  - (5) A description of the proximity of the facility to waste generators and population centers; a description of the method of waste transportation; the comments of the local community and state transportation authority on the proposed route, and route safety. Comments shall include proposed alternative routes and restrictions necessary to protect the public health;
  - (6) A description of facility aesthetic factors including visibility, appearance, and noise level; and
  - (7) A description of any other objective factors that the Department determines are reasonably related and relevant to the proper siting and operation of the facility.
- (d) In addition to the specific Part B information requirements for hazardous waste disposal facilities, owners and operators of hazardous waste landfills or longterm storage facilities shall provide the following information:
- (1) Design drawings and specifications of the leachate collection and removal system;
  - (2) Design drawings and specifications of the artificial impervious liner;
  - (3) Design drawings and specifications of the clay or clay-like liner below the artificial liner, and a description of the permeability of the clay or clay-like liner; and
  - (4) A description of how hazardous wastes will be treated prior to placement in the facility.
- (e) In addition to the specific Part B information requirements for surface impoundments, owners and operators of surface impoundments shall provide the following information:
- (1) Design drawings and specifications of the leachate collection and removal system;
  - (2) Design drawings and specifications of all artificial impervious liners;
  - (3) Design drawings and specifications of all clay or clay-like liners and a description of the clay or clay-like liner; and
  - (4) Design drawings and specifications that show that the facility has been constructed in a manner that will prevent landsliding, slippage, or slumping.
- (f) 40 CFR 270.30 through 270.33 (Subpart C), "Permit Conditions", are incorporated by reference including subsequent amendments and editions.
- (g) 40 CFR 270.40 through 270.43 (Subpart D), "Changes to Permit", are incorporated by reference including subsequent amendments and editions.
- (h) 40 CFR 270.50 through 270.51 (Subpart E), "Expiration and Continuation of Permits", are incorporated by reference including subsequent amendments and editions.
- (i) 40 CFR 270.60 through 270.68 (Subpart F), "Special Forms of Permits", are incorporated by reference including subsequent amendments and editions, except that 40 CFR 270.67 and 270.68 are not incorporated by reference.
- (j) 40 CFR 270.70 through 270.73 (Subpart G), "Interim Status", are incorporated by reference including subsequent amendments and editions. For the purpose of this incorporation by reference, "January 1, 1986" shall be substituted for "November 8, 1985" contained in 40 CFR 270.73(c).
- (k) 40 CFR 270.235, (Subpart I), "Integration with Maximum Achievable Control Technology (MACT) Standards", is incorporated by reference including subsequent amendments and editions.
- (l) The following are additional permitting requirements for hazardous waste facilities.
- (1) An applicant applying for a permit for a hazardous waste facility shall submit a disclosure statement to the Department as a part of the application for a permit or any time thereafter specified by the Department. The disclosure statement shall be supported by an affidavit attesting to the truth and completeness of the facts asserted in the statement and shall include:
    - (A) A brief description of the form of the business (e.g. partnership, sole proprietorship, corporation, association, or other);
    - (B) The name and address of any hazardous waste facility constructed or operated after October 21, 1976 by the applicant or any parent or subsidiary corporation if the applicant is a corporation; and
    - (C) A list identifying any legal action taken against any facility identified in Part (l)(1)(B) of this Rule involving:
      - (i) any administrative ruling or order issued by any state, federal or local authority relating to revocation of any environmental or waste management permit or

- license, or to a violation of any state or federal statute or local ordinance relating to waste management or environmental protection;
- (ii) any judicial determination of liability or conviction under any state or federal law or local ordinance relating to waste management or environmental protection; and
- (iii) any pending administrative or judicial proceeding of the type described in this Part.
- (D) The identification of each action described in Part (I)(1)(C) of this Rule shall include the name and location of the facility that the action concerns, the agency or court that heard or is hearing the matter, the title, docket or case number, and the status of the proceeding.
- (2) In addition to the information set forth in Subparagraph (I)(1) of this Rule, the Department shall require from any applicant such additional information as it deems necessary to satisfy the requirements of G.S. 130A-295. Such information may include:
  - (A) The names, addresses, and titles of all officers, directors, or partners of the applicant and of any parent or subsidiary corporation if the applicant is a corporation;
  - (B) The name and address of any company in the field of hazardous waste management in which the applicant business or any of its officers, directors, or partners, hold an equity interest and the name of the officer, director, or partner holding such interest; and
  - (C) A copy of any administrative ruling or order and of any judicial determination of liability or conviction described in Part (I)(1)(C) of this Rule, and a description of any pending administrative or judicial proceeding in that item.
- (3) If the Department finds that any part or parts of the disclosure statement is not necessary to satisfy the requirements of G.S. 130A-295, such information shall not be required.
- (m) An applicant for a new, or modification to an existing, commercial facility permit, shall provide a description and justification of the need for the facility.
- (n) Requirements for Off-site Recycling Facilities.
  - (1) The permit requirements of 15A NCAC 13A .0109 apply to owners and operators of off-site recycling facilities unless excluded in Subparagraph (2) of Paragraph (n).
  - (2) Requirements of 15A NCAC 13A .0113(n)(4), (5), (6), (7) and (8) do not apply to owners and operators of off-site recycling facilities that recycle only precious metals as described in 40 CFR 266.70(a), as incorporated by reference in 15A NCAC 13A .0111(b).
  - (3) Off-site facilities that recycle precious metals shall follow the regulations as described in 15A NCAC 13A .0111(b).
  - (4) Notwithstanding any other statement of applicability, the following provisions of 40 CFR Part 264, as incorporated by reference, shall apply to owners and operators of off-site recycling facilities except those excluded in 15A NCAC 13A .0113(n)(2):
    - (A) Subpart B - General Facility Standards;
    - (B) Subpart C - Preparedness and Prevention;
    - (C) Subpart D - Contingency Plan and Emergency Procedures;
    - (D) Subpart E - Manifest System, Recordkeeping and Reporting;
    - (E) Subpart G - Closure and Post-closure;
    - (F) Subpart H - Financial Requirements;
    - (G) Subpart I - Use and Management of Containers;
    - (H) Subpart J - Tank Systems;
    - (I) 264.101 - Corrective Action for Solid Waste Management Units;
    - (J) Subpart X - Miscellaneous Units; and
    - (K) Subpart DD - Containment Buildings.
  - (5) The requirements listed in Subparagraph (n)(4) of this Rule apply to the entire off-site recycling facility, including all recycling units, staging and process areas, and permanent and temporary storage areas for wastes.
  - (6) The following provisions of 15A NCAC 13A .0109 shall apply to owners and operators of off-site recycling facilities:
    - (A) The substitute financial requirements of Rule .0109(i)(1), (2) and (4); and
    - (B) The additional standards of Rule .0109(r)(1), (2), (3), (6) and (7).
  - (7) The owner or operator of an off-site recycling facility shall keep a written operating record at his facility.



- (8) The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:
- (A) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or recycling at the facility;
  - (B) The location of all hazardous waste within the facility and the quantity at each location. This information must include cross-references to specific manifest document numbers if the waste was accompanied by a manifest; and
  - (C) Documentation of the fate of all hazardous wastes received from off-site or generated on-site. This shall include records of the sale, reuse, off-site transfer, or disposal of all waste materials.

(o) Permit Fees for Commercial Hazardous Waste Facilities.

- (1) An applicant for a permit modification for a commercial hazardous waste facility shall pay an application fee as follows:
  - (A) Class 1 permit modification \$100;
  - (B) Class 2 permit modification \$1,000; or
  - (C) Class 3 permit modification \$5,000.
- Note: Class 1 permit modifications which do not require prior approval of the Division Director are excluded from the fee requirement.
- (2) The application fee for a new permit, permit renewal, or permit modification must accompany the application, and is non-refundable. The application shall be considered incomplete until the fee is paid. Checks shall be made payable to: Division of Waste Management.

*History Note:* Authority G.S. 130A-294(c); 130A-294.1; 130A-295(a)(1),(2), (c); 150B-21.6;  
 Eff. November 19, 1980;  
 Amended Eff. November 1, 1989; June 1, 1988; February 1, 1988; December 1, 1987;  
 Transferred and Recodified from 10 NCAC 10F .0034 April 4, 1990;  
 Amended Eff. August 1, 1990;  
 Recodified from 15A NCAC 13A .0014 Eff. August 30, 1990;  
 Amended Eff. April 1, 1993; August 1, 1991; October 1, 1990;  
 Recodified from 15A NCAC 13A .0013 Eff. December 20, 1996;  
 Amended Eff. August 1, 2008; April 1, 2006; August 1, 2004; April 1, 2001; August 1, 2000.

**15A NCAC 13A .0114 REQMENTS/AUTHORIZATION OF STATE HAZARDOUS WASTE PROG -  
 PART 271**

40 CFR 271.17, "Sharing of information", has been incorporated by reference including subsequent amendments and editions.

*History Note:* Authority G.S. 130A-294(c); 150B-21.6;  
 Eff. January 1, 1986;  
 Amended Eff. June 1, 1988; December 1, 1987; August 1, 1987; May 1, 1987;  
 Transferred and Recodified from 10 NCAC 10F .0041 Eff. April 4, 1990;  
 Recodified from 15A NCAC 13A .0015 Eff. August 30, 1990;  
 Amended Eff. April 1, 1993; October 1, 1990;  
 Recodified from 15A NCAC 13A .0014 Eff. December 20, 1996.

**15A NCAC 13A .0115 ANNUAL REPORTS**

*History Note:* Authority G.S. 130A-294(c);  
 Eff. January 1, 1984;  
 Transferred and Recodified from 10 NCAC 10F .0037 Eff. April 4, 1990;  
 Recodified from 15A NCAC 13A .0004 Eff. August 30, 1990;  
 Repealed Eff. May 1, 1991;  
 Recodified from 15A NCAC 13A .0015 Eff. December 20, 1996.

**15A NCAC 13A .0116 SPECIAL PURPOSE COMMERCIAL HAZARDOUS WASTE FACILITY**

(a) The Department shall evaluate all commercial hazardous waste facilities to determine a score for each facility in accordance with Paragraph (c) of this Rule.

(b) A commercial hazardous waste facility (other than an incinerator or a land disposal facility) with a volume of waste of 20,000 tons or less per year of hazardous waste and having a total score pursuant to Paragraph (c) of this Rule of equal to or less than 40 is designated as a special purpose commercial hazardous waste facility. These facilities shall be classified as follows:

Total Score	Category
1-11	1
Greater than 11-18	2
Greater than 18-25	3
Greater than 25-32	4
Greater than 32-40	5

(c) A score for each facility shall be determined by adding the total score for Paragraphs (d) through (k) of this Rule and subtracting the score for Paragraph (l) of this Rule.

(d) A score shall be assigned for size of the facility by adding the applicable score for storage and the applicable score for treatment using Table 1.

TABLE 1		
Size of Facility	Constructed Capacity	Score
Storage: (gallons)	Less than 10,000	1
	10,000-100,000	2
	Greater than 100,000	3
Treatment: (gallons per day)	Less than 10,000	1
	10,000-100,000	2
	Greater than 100,000	3

(e) A score shall be assigned for type of treatment permitted by adding the score for each type of treatment being performed by the facility using Table 2.

TABLE 2	
Type of Treatment Being Performed	Score
Storage Only	1
Solvent Recovery	2
Metal Recovery	2
Energy Recovery	2
Fuel Blending	2
Aqueous Treatment	3
Stabilization	2
Incineration	5
Residuals Management	5
Other Treatment	2

(f) A score shall be assigned for the nature of hazardous waste being treated or stored by adding the score for each type of waste managed at the facility using Table 3. However, if the facility is permitted for storage only and no treatment is performed, the score for the nature of hazardous waste shall be reduced by one-half for each hazardous waste stream stored only.

TABLE 3	
Nature of Hazardous Waste (from Annual Report as listed in the Permit)	Score
Corrosive	1
Ignitable	2
Reactive	3
Toxicity Characteristic	2
Listed Toxic	2
Acute	3

(g) A score shall be assigned for volume of hazardous waste by using the applicable score in Table 4.

TABLE 4	
Volume of Waste (Tons from Annual Report)	Score
Less than 2,000	1
2,000-10,000	2
10,000-20,000	3

(h) A score shall be assigned for uniformity, similarity and lack of diversity of waste streams by using the applicable score in Table 5.

TABLE 5	
Uniformity, Similarity, Lack of Diversity of Waste Streams (Number of EPA Waste Codes) As Listed in the Permit	Score
Less than 5	1
5-75	2
Greater than 75	3

(i) A score shall be assigned for predictability and treatability of site specific waste streams by using the applicable score in Table 6.

TABLE 6	
Predictability and Treatability of Waste Streams	Score
Simple Waste Streams and Treatment	1
Complex Waste Streams and Treatment (Incompatibles, highly toxic, or multicode waste streams).	2

(j) A score shall be assigned for compliance history for the past two years by using the highest applicable score in Table 7.

TABLE 7	
Compliance History for Past Two Years	Score
Class II Violations	1
Class I Violations	2
Penalties	3
Injunctions	5

(k) A score shall be assigned for annual changes, which increase/decrease "sensitive land use" within a ¼ mile radius of the commercial hazardous waste facility's property boundary by using the applicable score in Table 8. Each score shall be added together.

TABLE 8	
Changes in "sensitive land use"	Score
Increases	
Greater than 5 percent -- less than 10 percent increase in the number of residential housing units as compared to the baseline.	1
Greater than or equal to 10 percent increase in the number of residential housing units as compared to the baseline, or 30 percent increase in the number of total sensitive land uses over a period of the previous four years.	2
Greater than 50 percent increase in the number of non-residential sensitive land uses as compared to the baseline.	1
Decreases	
Greater than 5 percent -- less than 10 percent decrease in the number of residential housing units as compared to the baseline.	-1
Greater than or equal to 10 percent decrease in the number of residential housing units as compared to the baseline, or 30 percent decrease in the number of total sensitive land uses over a period of the previous four years.	-2

Greater than 50 percent decrease in the number of non-residential sensitive land uses as compared to the baseline.

-1

"Sensitive land use", as defined in G.S. 130A-295.01(f), includes residential housing, places of assembly, places of worship, schools, day care providers, and hospitals. Sensitive land use does not include retail businesses.

"Baseline", means:

- (1) for existing "Special Purpose Commercial Hazardous Waste Facilities" as the January 2008 data collected from the local government that has planning jurisdiction over the site on which the facility is located; and
- (2) for new "Special Purpose Commercial Hazardous Waste Facilities" as the data from the local government that has planning jurisdiction over the site on which the facility is located collected in the year in which the facility permit is first issued.

(l) A score shall be assigned for on-site reclamation by using the applicable score in Table 9.

TABLE 9

Reclamation (Credit Given)	Score
Pretreatment for Off-site Reclamation	1
On-site Reclamation	2

(m) The information referred to in Paragraphs (c) through (l) of this Rule shall be determined based on the facility's permit, the previous year's annual report, and compliance history. If no annual report was submitted, quarterly projections of waste volume shall be submitted to the Department by the facility. Each facility may be re-evaluated at any time new information is received by the Department concerning the factors in Paragraphs (c) through (l) of this Rule.

(n) The frequency of inspections at special purpose commercial hazardous waste facilities shall be determined by the facility's classification as follows:

Category	Minimum Inspections
1	2 per month
2	4 per month
3	6 per month
4	8 per month
5	10 per month

*History Note: Authority G.S. 130A-295.02(j);  
Temporary Adoption Eff. February 15, 1991 for a period of 180 days to expire on  
August 14, 1991;  
ARRC Objection Lodged February 25, 1991;  
ARRC Objection Removed March 21, 1991;  
Eff. August 1, 1991;  
Amended Eff. April 1, 1994;  
Recodified from 15A NCAC 13A .0016 Eff. December 20, 1996;  
Amended Eff. January 1, 2011.*

#### 15A NCAC 13A .0117 FEE SCHEDULES

(a) A commercial hazardous waste storage, treatment, or disposal facility other than a special purpose facility shall pay monthly, in addition to the fees applicable to all hazardous waste storage, treatment, or disposal facilities as required by G.S. 130A-294.1, a charge of forty-one dollars (\$41.00) per hour of operation. The fee shall be paid for any time when hazardous waste is managed or during periods of maintenance, repair, testing, or calibration. Each facility shall submit an operational schedule to the Department on a quarterly basis.

(b) A special purpose commercial hazardous waste facility shall pay monthly, in addition to the fees applicable to all hazardous waste treatment, storage or disposal facilities as required by G.S. 130A-294.1, a charge per ton of hazardous waste received during the previous month and an additional charge based on the frequency of inspections as noted in the following schedules:

- (1) Effective April 1, 2011 to December 31, 2011, three dollars and fifty cents (\$3.50) per ton of hazardous waste received and:  
Category                      Fee

	1	\$1,110.00
	2	\$2,220.00
	3	\$3,330.00
	4	\$4,440.00
	5	\$5,550.00
(2)	Effective January 1, 2012 to December 31, 2012, four dollars (\$4.00) per ton of hazardous waste received and:	
	Category	Fee
	1	\$1,221.00
	2	\$2,442.00
	3	\$3,663.00
	4	\$4,884.00
	5	\$6,105.00
(3)	Effective January 1, 2013, four dollars and fifty cents (\$4.50) per ton of hazardous waste received and:	
	Category	Fee
	1	\$1,332.00
	2	\$2,664.00
	3	\$3,996.00
	4	\$5,328.00
	5	\$6,660.00

*History Note:* Authority G.S. 130A-295.02(h);  
Temporary Adoption Eff. February 15, 1991 for a period of 180 days to expire on August 14, 1991;  
ARRC Objection Lodged February 25, 1991;  
ARRC Objection Removed March 21, 1991;  
Eff. August 1, 1991;  
Recodified from 15A NCAC 13A .0017 Eff. December 20, 1996;  
Amended Eff. April 1, 2011.

**15A NCAC 13A .0118 STANDARDS FOR THE MANAGEMENT OF USED OIL**

- (a) 40 CFR 279.1 (Subpart A), "Definitions", is incorporated by reference including subsequent amendments and editions, except that the Definition for "Used Oil" is defined by G.S. 130A-290(b) and is not incorporated by reference.
- (b) 40 CFR 279.10 through 279.12 (Subpart B), "Applicability", are incorporated by reference including subsequent amendments and editions.
- (c) 40 CFR 279.20 through 279.24 (Subpart C), "Standards for Used Oil Generators", are incorporated by reference including subsequent amendments and editions.
- (d) 40 CFR 279.30 through 279.32 (Subpart D), "Standards for Used Oil Collection Centers and Aggregation Points", are incorporated by reference including subsequent amendments and editions.
- (e) 40 CFR 279.40 through 279.47 (Subpart E), "Standards for Used Oil Transporter and Transfer Facilities", are incorporated by reference including subsequent amendments and editions.
- (f) 40 CFR 279.50 through 279.59 (Subpart F), "Standards for Used Oil Processors and Re-Refiners", are incorporated by reference including subsequent amendments and editions.
- (g) 40 CFR 279.60 through 279.67 (Subpart G), "Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery", are incorporated by reference including subsequent amendments and editions.
- (h) 40 CFR 279.70 through 279.75 (Subpart H), "Standards for Used Oil Fuel Marketers", are incorporated by reference including subsequent amendments and editions.
- (i) 40 CFR 279.80 through 279.81 (Subpart I), "Standards for Use as a Dust Suppressant and Disposal of Used Oil" are incorporated by reference including subsequent amendments and editions. (Note: 40 CFR 279.82, which addresses used oil as a dust suppressant, is specifically not incorporated by reference. See also G.S. 130A-309.15 for prohibited acts regarding used oil).
- (j) Additional State Requirements:

- (1) By July 1 of each year the following persons shall notify the Department by submitting an annual report listing the type and quantity of used oil transported, collected, and recycled during the preceding calendar year, on Department forms:
  - (A) Persons transporting more than 500 gallons of used oil per week over public highways;
  - (B) Collection facilities that annually receive more than 6,000 gallons of used oil excluding the volume of used oil collected from individuals that change their own personal motor oil;
  - (C) Facilities that annually recycle more than 10,000 gallons of used oil; and
  - (D) Public used oil collection centers.
- (2) The following persons are not required to comply with 15A NCAC 13A .0118(j)(1)
  - (A) An electric utility that generates used oil which is reclaimed, recycled, or re-refined on-site for use in its operations; and
  - (B) An on-site burner that burns its own on-specification used oil provided that the facility is in compliance with any Air Quality permit requirements established by the Department.
- (3) An annual fee of twenty five dollars (\$25.00) shall be paid by all persons identified in 15A NCAC 13A .0118(j)(1)(A) through .0118(j)(1)(C) by July 1 of each year.

*History Note:* Authority G.S. 130A-294(b),(c); 150B-21.6;  
 Eff. October 1, 1993;  
 Recodified from 15A NCAC 13A .0018 Eff. December 20, 1996;  
 Amended Eff. August 1, 2000.

#### 15A NCAC 13A .0119 STANDARDS FOR UNIVERSAL WASTE MANAGEMENT - PART 273

- (a) 40 CFR 273.1 through 273.9 (Subpart A), "General" are incorporated by reference including subsequent amendments and editions.
- (b) 40 CFR 273.10 through 273.20 (Subpart B), "Standards for Small Quantity Handlers of Universal Waste" are incorporated by reference including subsequent amendments and editions.
- (c) 40 CFR 273.30 through 273.40 (Subpart C), "Standards for Large Quantity Handlers of Universal Waste" are incorporated by reference including subsequent amendments and editions.
- (d) 40 CFR 273.50 through 273.56 (Subpart D), "Standards for Universal Waste Transporters" are incorporated by reference including subsequent amendments and editions.
- (e) 40 CFR 273.60 through 273.62 (Subpart E), "Standards for Destination Facilities" are incorporated by reference including subsequent amendments and editions.
- (f) 40 CFR 273.70 (Subpart F), "Import Requirements" is incorporated by reference including subsequent amendments and editions.
- (g) 40 CFR 273.80 through 273.81 (Subpart G), "Petitions to include Other Wastes Under 40 CFR Part 273" are incorporated by reference including subsequent amendments and editions, except that 40 CFR 273.80(a) and (b), are not incorporated by reference.
  - (1) The following shall be substituted for the provisions of 40 CFR 273.80(a) which were not incorporated by reference:  
 Any person seeking to add a hazardous waste or a category of hazardous waste to this Part may petition for a regulatory amendment under this Subpart and 15A NCAC 24B .0001 and 40 CFR 260.23.
  - (2) The following shall be substituted for the provisions of 40 CFR 273.80(b) which were not incorporated by reference:  
 To be successful, the petitioner must demonstrate to the satisfaction of the Administrator that regulation under the universal waste regulations of 40 CFR Part 273 is:
    - (A) appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program;
    - (B) the petition must include the information required by 15A NCAC 24B .0001; and
    - (C) the petition shall also address as many of the factors listed in 40 CFR 273.81 as are appropriate for the waste or waste category addressed in the petition.

*History Note:* Authority G.S. 130A-294(c); 150B-21.6;  
 Eff. January 1, 1996;

*Recodified from 15A NCAC 13A .0019 Eff. December 20, 1996;  
Amended Eff. April 1, 2001; August 1, 1998.*

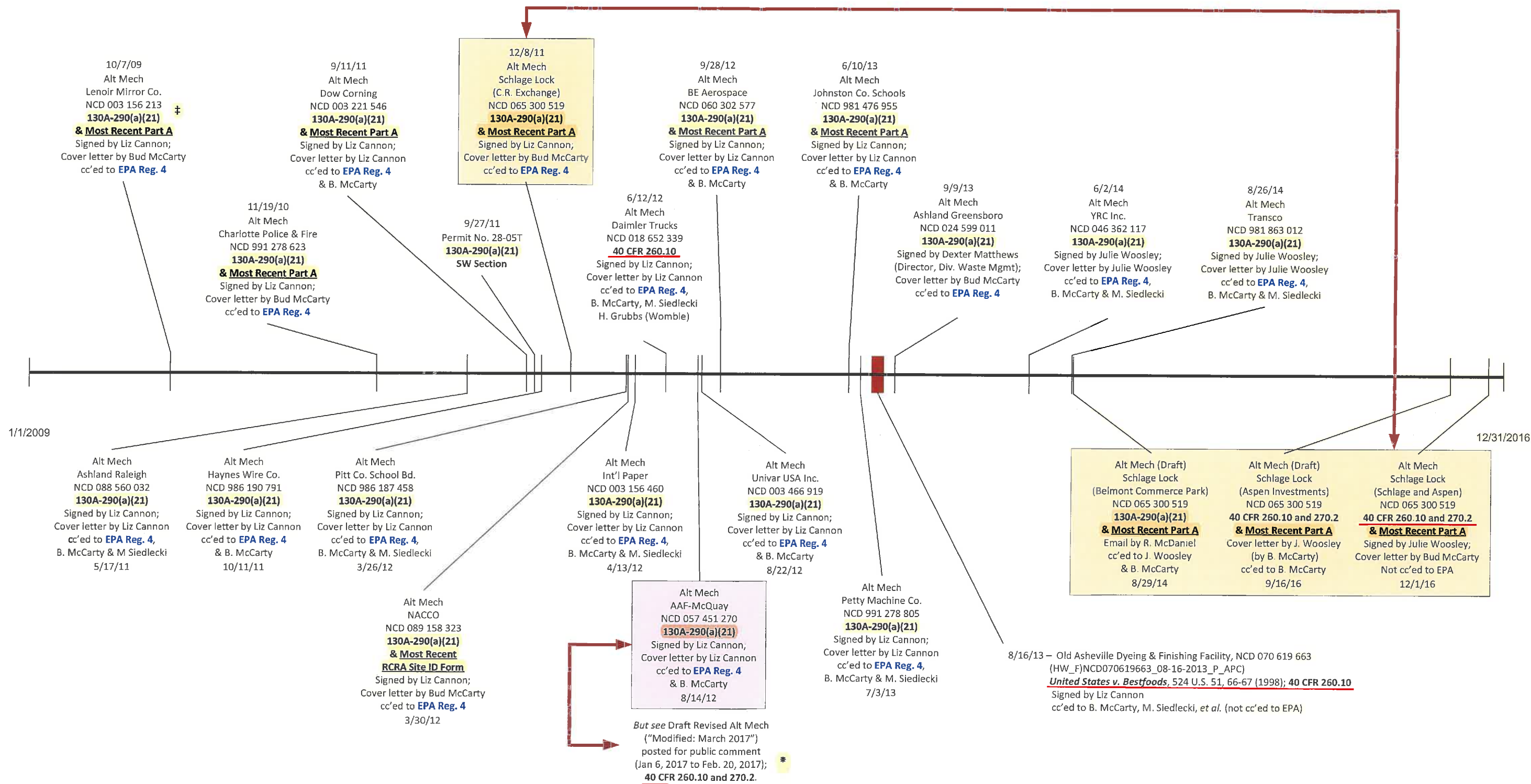
**Attachment 3**

**Graphic, Alternate Mechanisms (Oct. 2009 to Dec. 2016)**

**Summarizing Documents Available from the Section's Public Files (Laserfiche System)  
(attached to Open Request No. NCORR-2017-01-02 (Jan. 31, 2017))**



Administrative Orders in lieu of Post-Closure Permit  
(Alternate Mechanisms) and Other Records  
from NCDEQ Public File (Laserfiche)



‡ - See Open Records Request No. NCORR-2016-11-05 (Nov. 19, 2016) (addressing the fact that, in 1989, the NC General Assembly amended G.S. 130A-290 to add the definition of “operator” in 130A-290(a)(21) that has remained in place and unmodified for approximately 27 years).

\*- Stipulation of Fact No. III.B.8 of the Draft Revised Alt Mech states: “Daikin Applied Americas Inc. is listed as the legal operator on the April 1, 2016, RCRA Subtitle C Site Identification Form” (i.e., the **most recent RCRA Site ID Form**, which is described as “2015 BI-REPORT” in the Laserfiche system ). Note: the referenced EPA Series 8700 form states that Daikin Applied Americas, Inc. became operator on “08/09/1988.” This conflicts with Series 8700 forms for the facility dated 8/28/12, 8/7/91, and 1/5/89 (which identifies Heatcraft Inc. as the sole owner and operator of the facility).

**Attachment 4**

**FOIA Request No. EPA-HQ-2017-001749**

**and EPA Response**

**Request Details****Tracking Number :** EPA-HQ-2017-001749

Submitted

Evaluation

Assignment

Processing

**Contact Information**

Full Name :	Closed Rodney Huerter	Mailing Location :	United States/U.S. Territories
Organization :	Veolia North America	Address Line 1 :	4760 World Houston Parkway
Email Address :	rodney.huerter@veolia.com	Address Line 2 :	Suite 100
Phone Number :		City :	Houston
Fax Number :		State/Province :	Texas
		Zip Code/Postal Code :	77032

**Request Information**

Agency :	Office of Resource Conservation and Recovery	Request Phase :	Closed
Will Pay Up To :	\$25.00	Request Track :	Complex
Date Submitted :	12/02/2016	Final Disposition :	No records
Closed Date :	01/25/2017		

**Description :**

1904/2000

Definitions in 40 CFR 260.10 apply to "parts 260 through 273," and include separate definitions for "owner" and "operator." Part 270.2, which applies only to "parts 270, 271 and 272," has a definition for "owner or operator," which means "the owner or operator of any facility or activity subject to regulation under RCRA." Section 260.10 does not have a definition for "owner or operator." The preamble for the original Consolidated Permit Regulations states, in part: "Frequently terms are defined in reference to other terms"

**Request a Fee Waiver**

Made Request ? No

**Request Expedited Handling**

Made Request ? No

**Supporting Files**

Attached Files :

Attached File	Type	Size (MB)
<a href="#">EPA Background Doc, 40 CFR Part 260 (4.29.80) - excerpted.pdf</a>	PDF	0.58
<a href="#">Excerpted RCRA Part A Permit Apps. (1980, 1999, 2005, 2015).pdf</a>	PDF	1.30

**Payments**

No payments to display.

**Invoice**

Total Amount Billed : \$0.00

Date Sent :

No invoice has been added.

**Correspondence with Requester**

Subject	From	Date	<a href="#">Detail</a>
Final Disposition, Request EPA-HQ-2017-001749	Valerie Ward	2017-01-25	
EPA-HQ-2017-001749 has been processed with the following final disposition: No records.			
Letter for Mr. Huerter	Valerie Ward	2017-01-24	

Subject	From	Date	Detail
01/24/2017 03:24 PM			
FOIA Request: EPA-HQ-2017-001749			

Mr. Rodney Huerter  
4760 World Houston Parkway  
Houston, Texas 77032

Re: FOIA EPA-HQ-2017-001749

Dear Mr. Huerter:

Thank you for your FOIA request dated December 2, 2016, requesting copies of EPA guidance or policy documents that indicate that "owner or operator" under 40 CFR 270.2 means something other than an "owner" or "operator" as those terms are defined in §260.10.

We have no documents responsive to this request.

This letter concludes our response to your request. You may appeal this response by email at [hq.foia@epa.gov](mailto:hq.foia@epa.gov), or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only). Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be made in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals received after the 90 calendar day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek assistance from EPA's FOIA Public Liaison at [hq.foia@epa.gov](mailto:hq.foia@epa.gov) or (202)566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; e-mail,

Subject	From	Date	Detail
<a href="mailto:ogis@nara.gov">ogis@nara.gov</a> ; telephone, 301-837-1996 or 1-877-684-6448; and facsimile, 301-837-0348			

Jeffrey Gaines

Environmental Scientist

FOIA Request EPA-HQ-2017-001749  
Submitted

2016-12-02

This message is to confirm your request submission to the FOIAonline application:  
[View Request](#). Request information is as follows:

- Tracking Number: EPA-HQ-2017-001749
- Requester Name: Rodney Huerter
- Date Submitted: 12/02/2016
- Request Status: Submitted
- Description: Definitions in 40 CFR 260.10 apply to "parts 260 through 273," and include separate definitions for "owner" and "operator." Part 270.2, which applies only to "parts 270, 271 and 124," has a definition for "owner or operator," which means "the owner or operator of any facility or activity subject to regulation under RCRA." Section 260.10 does not have a definition for "owner or operator." The preamble for the original Consolidated Permit Regulations states, in part: "Frequently terms are defined in reference to other terms which are also defined." 45 FR 33290, 33294. The same preamble also states: "The requirements of a RCRA permit bind both the 'owner' and the 'operator' of the permitted facility . . . . The reasons for this approach are explained in the preamble to the regulations implementing section 3004 of RCRA. Id. at 33295. The referenced preamble related to section 3004 states, in relevant part: "EPA has also changed its usage of the [originally proposed] term 'owner/operator' to 'owner or operator' to indicate when EPA will be satisfied by compliance by either party." 45 FR 33154, 33,170 (May 19, 1980). (See also the EPA Office of Solid Waste's April 29, 1980 Background Document (40 CFR Part 260), attached). That, and the EPA's current and historical use of the part 260.10 definitions of owner and operator in its RCRA Part A Permit Application instructions (excerpted copies of the 1980, 1999, 2005 and 2015 revisions are included with this request), logically appears to indicate that the definition of "owner or operator" in section 270.2 merely means an "owner" or "operator," as those terms are

Subject	From	Date	<a href="#">Detail</a>
defined in section 260.10. I request copies of any EPA guidance or policy documents, if any such records exist, that would indicate that “owner or operator” under section 270.2 means something other than an “owner” or “operator,” as those terms are defined in section 260.10.			

## Released Records

No records have been released.



**Attachment 5**

**FOIA Request No. EPA-HQ-2017-002077**

**and EPA Response**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

FEB 06 2017

OFFICE OF  
SOLID WASTE AND  
EMERGENCY RESPONSE

NOW THE  
OFFICE OF LAND AND  
EMERGENCY MANAGEMENT

Mr. Rodney Huerter  
Veolia North America  
4760 World Houston Parkway  
Houston, TX 77032

**RE: Freedom of Information Request EPA-HQ-2017-002077**

Thank you for your FOIA request of December 14, 2016, requesting copies of EPA guidance or policy that displaces RPPC document No. 9521.1984(03) regarding permit application withdrawal. The Office of Resource Conservation and Recovery has no documents responsive to this request.

This letter concludes our response to your request. You may appeal this response by email at [hq.foia@epa.gov](mailto:hq.foia@epa.gov), or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only). Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be made in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals received after the 90 calendar day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek assistance from EPA's FOIA Public Liaison at [hq.foia@epa.gov](mailto:hq.foia@epa.gov) or (202)566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; e-mail, [ogis@nara.gov](mailto:ogis@nara.gov); telephone, 301-837-1996 or 1-877-684-6448; and facsimile, 301-837-0348.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Gaines", is written over the word "Sincerely,".

Jeff Gaines, Environmental Scientist  
Permits Branch (5303P)  
Program Implementation and Information Division

**Request Details****Tracking Number :** EPA-HQ-2017-002077

Submitted

Evaluation

Assignment

Processing

**Contact Information**

Full Name : Rodney		Mailing Location : United
Huerter		States/U.S. Territories
Organization : Veolia	Address Line 1 : 4760	
North	World	
America	Houston Parkway	
Email Address :	Address Line 2 : Suite	
rodney.huerter@veolia.com	100	
Phone Number :	City : Houston	
Fax Number :	State/Province : Texas	
Zip Code/Postal Code : 77032		

**Request Information**

Agency : Office of		Request Phase : Closed
Resource Conservation and Recovery		Request Track : Simple
Will Pay Up To : \$25.00		Final Disposition :
Date Submitted :	No records	
12/14/2016		
Closed Date :		
02/09/2017		

**Description :**

1306/2000

RCRA Permit Policy Compendium No. 9521.1984(03) (July 9, 1984), which is included in EPA/530-SW-91-0621, RCRA Permit Policy Compendium, Vol. 9 (Aug. 1991) states: "For [Strategic Planning and Management System] purposes, a permit application is considered withdrawn when EPA, or an authorized state, approves the closure plan for the facility following an inspection, a public notice of the plan, and response to comments. Termination of interim status through permit denial is not a prerequisite for

**Request a Fee Waiver**

Made Request ? No

**Request Expedited Handling**

Made Request ? No

**Supporting Files**

Attached Files :

Attached File	Type	Size (MB)
<a href="#">9521.1984(03), from RCRA Permit Policy Compend., EPA 530-SW-91-0621, Vol. 9 (Aug. 1991).pdf</a>	PDF	0.14

**Payments**

Date	Amount
02/09/2017	\$14.00
Total Invoice Amount	\$14.00
Total Amount Paid	\$14.00
Total Amount Owed	\$0.00

**Invoice**

Total Amount Billed : \$14.00

Date Sent : 02/09/2017

Title	Invoice Date	Amount
<a href="#">EPA-HQ-2017-002077 Invoice 20170206.pdf</a>	02/06/2017	\$14.00

**Correspondence with Requester**

Subject	From	Date	<a href="#">Detail</a>
Final Disposition, Request EPA-HQ-2017-002077	Valerie Ward	2017-02-09	

Subject	From	Date	Detail
EPA-HQ-2017-002077 has been processed with the following final disposition: No records.			

[EPA-HQ-2017-002077 Invoice 20170206.pdf](#), PDF, 0.01 MB

Huerter Letter	Valerie Ward	2017-02-06
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02/06/2017 12:01 PM

FOIA Request: EPA-HQ-2017-002077

[Huerter-002077LT.pdf](#), PDF, 0.27 MB

FOIA Request EPA-HQ-2017-002077 Submitted	2016-12-14
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This message is to confirm your request submission to the FOIAonline application:  
[View Request](#). Request information is as follows:

- Tracking Number: EPA-HQ-2017-002077
- Requester Name: Rodney Huerter
- Date Submitted: 12/14/2016
- Request Status: Submitted
- Description: RCRA Permit Policy Compendium No. 9521.1984(03) (July 9, 1984), which is included in EPA/530-SW-91-0621, RCRA Permit Policy Compendium, Vol. 9 (Aug. 1991) states: "For [Strategic Planning and Management System] purposes, a permit application is considered withdrawn when EPA, or an authorized state, approves the closure plan for the facility following an inspection, a public notice of the plan, and response to comments. Termination of interim status through permit denial is not a prerequisite for counting a withdrawal as a final determination, nor does it matter whether the Part B request precipitated the closure or whether the facility voluntarily chose to close in the absence of a Part B request." (copy of RPPC No. 9521.1984(03), excerpted from EPA/530-SW-91-0621, Vol 9, is uploaded with this request). I request copies of any EPA policy or guidance document issued after August 1991, if any such guidance exists, which displaces RPPC No. 9521.1984(03) (i.e., indicates that a RCRA a permit application is NOT considered withdrawn when EPA, or an authorized state, approves a closure plan for a RCRA the facility following an inspection, a public notice of the plan, and response to comments). If such a policy or guidance document does not exist, I request confirmation of that fact.

Subject	From	Date	<i>Detail</i>
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## Released Records

No records have been released.